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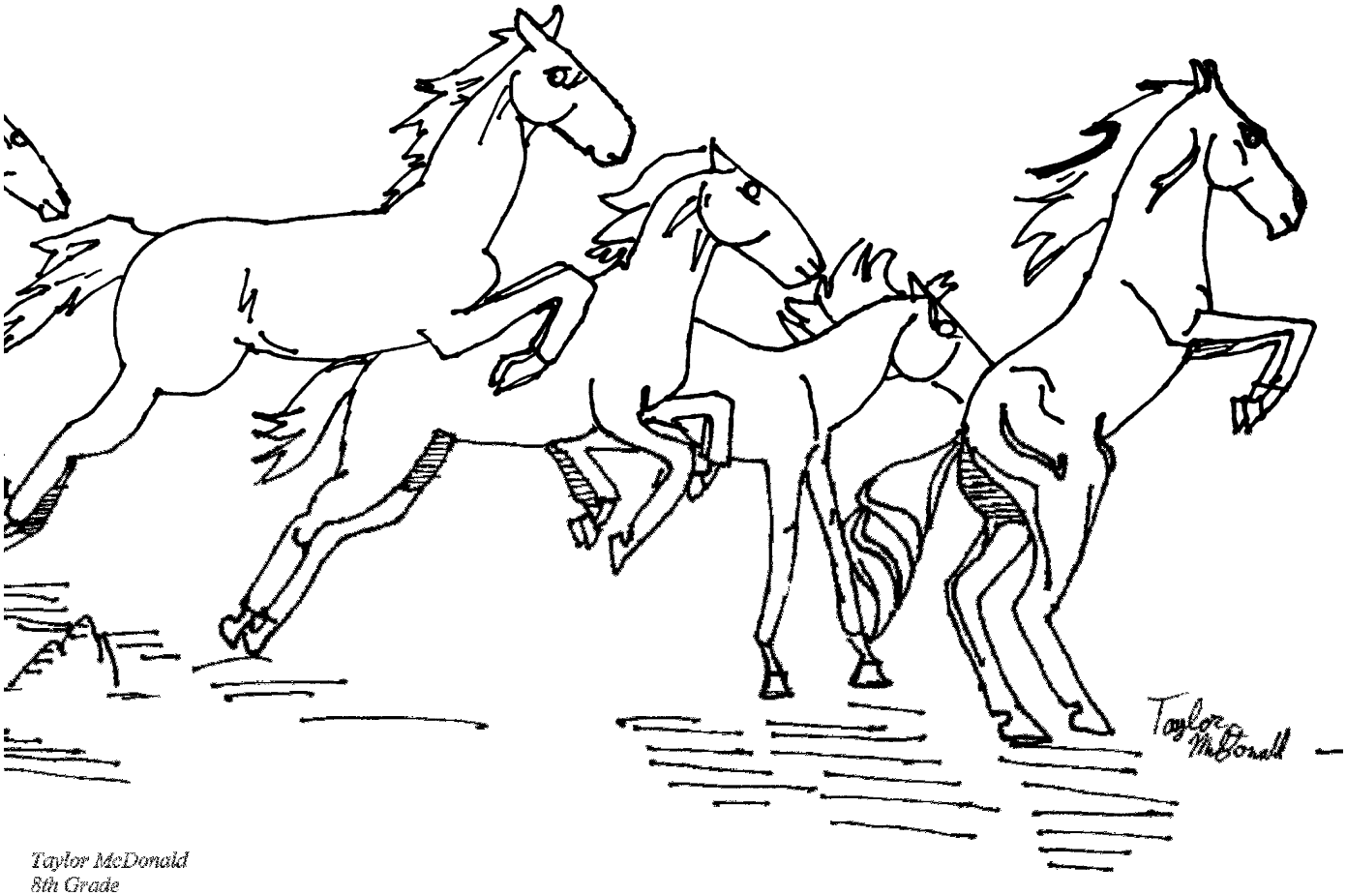

Taylor McDonald
8th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0651-GA

Requestor:

The Honorable Ralph J. Bernsen, Sr.

Medina County Attorney

3rd Floor, Medina County Courthouse

1100 16th Street

Hondo, Texas 78861

Re: Whether a county is required to competitively bid the transfer/resale of personal property under particular circumstances (RQ-0651-GA)

Briefs requested by January 8, 2008

RQ-0652-GA

Requestor:

Ms. Ann S. Fuelberg

Executive Director

Employees Retirement System of Texas

Post Office Box 13207

Austin, Texas 78711-3207

Re: Whether an open enrollment charter school is a governmental entity, and whether the state may enter into an agreement with the Social Security Administration on the school's behalf (RQ-0652-GA)

Briefs requested by January 9, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200706328
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 12, 2007

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.216

The Public Utility Commission of Texas (commission) proposes new §25.216, regarding Selection of Transmission Service Providers. The proposed new rule will establish a process for entities interested in constructing certain transmission improvements to submit expressions of interest to the commission. The rule also establishes the procedure whereby the commission selects the entity or entities responsible for constructing the transmission improvements, and specifies any requirements deemed appropriate by the commission to ensure that such entities complete the ordered improvements in a timely and cost-effective manner. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 34560 is assigned to this proceeding.

Mr. T. Brian Almon, Director, Electric Transmission Analysis, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Almon has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the development of transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones. This development will assist the State of Texas in achieving its goal for renewable energy. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Almon has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, February 12, 2008, at 9:30 a.m. The request for a public hearing must be received within 32 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 32 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 34560.

In addition to the proposed new language, the commission requests that parties submit comments on the following question:

Are there other provisions that should be considered to provide incentives to TSPs to obtain right-of-way by agreement with landowners without increasing the overall cost of the line?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.005 which grants the commission authority to order transmission service and construction or enlargement of facilities; PURA §37.051, which requires in part that electric utilities obtain a certificate of convenience and necessity (CCN) from the commission prior to providing service to the public; PURA §37.056, which establishes conditions under which the commission may grant or deny a CCN; PURA §39.203(e), which in part directs the commission to require an electric utility or a transmission and distribution utility to construct or enlarge transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under PURA §39.904(a) and directs the commission to issue final orders in proceedings related to this provision before the 181st day after the date the application is filled with the commission; and specif-

ically, PURA §39.904 which requires the commission to develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones and to consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether grant a certificate of convenience and necessity.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.005, 37.051, 37.056, 39.203(e), and 39.904.

§25.216. Selection of Transmission Service Provider.

(a) Application. This section shall apply to any transmission service provider (TSP) that intends to submit an application to construct, operate, and maintain one or more CREZ Transmission Plan (CTP) Facilities.

(b) Purpose. The purpose of this section is to state the requirements that govern the selection of one or more TSPs that will be responsible for the construction, operation, and maintenance of CTP Facilities.

(c) Definitions. The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:

(1) CREZ Transmission Plan (CTP)--The transmission capacity plan required by §25.174(c)(2) of this title (relating to Competitive Renewable Energy Zones).

(2) CTP Facility--A new substation or transmission line with or without a substation as identified in the CREZ Transmission Plan.

(3) CTP Proposal--An application to serve as a Designated TSP for a CTP Facility that is submitted by a Qualified TSP.

(4) Designated TSP--A Qualified TSP that the commission has ordered to construct, operate, and maintain one or more CTP Facilities.

(5) Interested TSP--An entity seeking status as a Designated TSP that meets the definition of a Transmission Service Provider as defined by §25.5(143) of this title (relating to Definitions) or that commits to meeting such definition as necessary to fulfill its obligations as a Designated TSP.

(6) Qualified TSP--An Interested TSP that has been approved by the commission as meeting the requirements of subsection (e) of this section.

(d) Selection process. The following steps outline the process the commission will employ to select Designated TSPs.

(1) The commission shall establish a time period in which Interested TSPs may file applications for status as Qualified TSPs. To qualify, each such Interested TSP must demonstrate in its application that it has available or has reliable and ready access to sufficient and adequate resources to construct, operate, and maintain CTP Facilities. The commission will designate Qualified TSPs based on this section, staff's recommendation, and other relevant information. The commission may limit the size or type of CTP Facilities for which a Qualified TSP may be selected to construct, operate, and maintain.

(2) Following commission approval of a CREZ Transmission Plan, the commission may solicit CTP Proposals from Qualified TSPs and may establish a deadline by which such CTP Proposals must be filed.

(3) To facilitate the comparison of CTP Proposals from Qualified TSPs to construct, operate, and maintain specific CTP Facilities, the commission may prepare a list of CTP projects for which it seeks CTP Proposals. Each project shall consist of one or more distinct CTP Facilities. The list of projects may be included in an order in a proceeding to establish Competitive Renewable Energy Zones or as a separate determination. In addition, the commission may require that CTP Facilities within a CTP project be separated for purposes of filing applications for certificates of convenience and necessity (CCNs), with the result being that more than one CCN application may be required for a particular CTP project.

(4) A Qualified TSP may submit an application to construct, operate, and maintain the CTP Facilities included in a CTP project in a proceeding initiated for that purpose. The commission will review such TSP Proposals and may authorize one or more of the Qualified TSPs to construct, operate, and maintain specific CTP Facilities as a Designated TSP. The commission's decision will be based on this section, staff's recommendation, and other relevant information.

(e) Qualification of Interested TSP. In order to qualify to submit an application to construct, operate, and maintain CTP Facilities, an Interested TSP must demonstrate that it meets the relevant requirements in this subsection. An Interested TSP or Designated TSP must continue to meet the relevant qualification requirements in this subsection until the date that the CTP Facilities are placed in-service.

(1) The Interested TSP must demonstrate that it has or has access to adequate financial resources to finance the licensing, design, Right-of-Way (ROW) and land acquisition, construction, operation, and maintenance of CTP Facilities, in accordance with subsection (f) of this section.

(2) The Interested TSP must demonstrate that it has available or has reliable and ready access to technical and managerial resources necessary to efficiently and effectively manage the licensing, design, ROW and land acquisition, construction, operation, and maintenance of CTP Facilities. Such demonstration must include a description of the following technical and managerial resources:

(A) Capability and experience of the Interested TSP that would enable it to comply with all scheduling and operating requirements for the transmission system. This information shall include resumes for key management personnel.

(B) Capability and experience of the Interested TSP in managing or performing the licensing, design, ROW and land acquisition, construction, maintenance, and operation required for the relevant CTP Facilities. This information shall include resumes for key management personnel.

(3) The Interested TSP must demonstrate that its business practices are consistent with designation to license, design, acquire ROW, construct, operate, and maintain CTP Facilities. It shall provide the following information regarding its business history for the current calendar year and the three calendar years immediately preceding its filing under subsection (d)(1) of this section:

(A) Any complaint history and compliance record with federal regulatory agencies, state public utility commissions, attorney general offices, or other applicable regulatory agencies in states where the Interested TSP is conducting business or has conducted business. This information should be provided regarding the Interested TSP; the Interested TSP's affiliates that provide or have provided utility-related services such as telecommunications, electric, gas, water, or cable service; and the Interested TSP's predecessors in interest and principals.

(B) A summary of any instances in which the Interested TSP is currently under investigation or is a defendant in a proceeding involving an attorney general or any state or federal regulatory agency, either in Texas or in another state or jurisdiction, for violation of any laws, including regulatory requirements.

(4) The Interested TSP must provide the following information:

(A) An affidavit stating that the information provided under this subsection is true and that the applicant will comply with the applicable rules in this title.

(B) Other evidence, at the discretion of the Interested TSP, that supports the capability of the Interested TSP to efficiently and effectively manage the licensing, design, ROW and land acquisition, construction, operation, and maintenance of CTP Facilities.

(f) Selection of Designated TSP. If the commission solicits CTP Proposals from Qualified TSPs, it may select one or more Qualified TSPs to construct, operate, and maintain each CTP Facility with the objective of providing the needed CTP Facilities in a manner that is most beneficial and cost effective for customers.

(1) Each Qualified TSP shall submit with its CTP Proposal an update of the information set out in subsection (e) of this section and include for each separate CTP Facility an implementation plan discussing:

(A) The process that will be used for the preparation of any required applications for CCNs.

(B) A general description of the CTP Facility including proposed structure types (lattice, monopole, etc.) and composition (wood, steel, concrete, hybrid, etc.), conductor size and type, and ROW width.

(C) The projected timeline from the date of Designated TSP selection to the date of CTP Facility in-service, with the following intermediate dates:

(i) start and completion of engineering and design;

(ii) start and completion of material and equipment procurement;

(iii) start and completion of ROW and land acquisition;

(iv) start and completion of construction; and

(v) project in-service.

(D) The type of resources (in-house labor, contractors, other TSPs, etc.) contemplated for the design, engineering, material and equipment procurement, construction, and management of the CTP Facility, including ROW and land acquisition.

(E) The type of resources contemplated for operation and maintenance of the CTP Facility after it is in-service.

(F) The estimated costs to procure and erect (including design, engineering, materials, labor, transportation and other necessary expenses but excluding ROW and land acquisition) tangent, 30-degree and 90-degree structures and the type of conductor that would be used for the CTP Facility.

(G) The actual average operating and maintenance cost-per-mile previously incurred by the Qualified TSP for each of the last five years for all transmission lines of the same voltage that are owned and operated by the Qualified TSP. If the Qualified TSP has not previously incurred such costs for transmission lines of the same voltage, it shall provide a detailed explanation and estimate of its anticipated average annual operating and maintenance costs for the transmission line portion of the CTP Facility.

(H) The Qualified TSP's prior experience in obtaining transmission facility licenses and constructing, operating, and maintaining facilities with similar qualities such as structure-type, line length, and voltage ("similar facilities"). If the Qualified TSP does not have experience obtaining transmission facility licenses and constructing, operating, and maintaining similar facilities, it shall provide information concerning the qualifications and experience of the resources upon which it intends to rely to carry out these functions. It shall also specify whether the resources are employees of the Qualified TSP or will be engaged on a contractual basis. Resumes for all executive, managerial, and supervisory personnel that will be involved in obtaining a transmission CCN and constructing, operating, and maintaining facilities shall be provided.

(I) The Qualified TSP's preexisting procedures for acquiring ROW and land and managing ROW and land acquisition for similar facilities. If the Qualified TSP does not have such preexisting procedures, it shall provide a detailed description of its plan for acquiring ROW and land and managing ROW and land acquisition.

(J) The Qualified TSP's preexisting procedures for mitigating impact on affected landowners and addressing public concerns regarding similar facilities. If the Qualified TSP does not have such preexisting procedures, it shall provide a detailed description of its plan for mitigating the impacts on affected landowners and addressing public concerns regarding similar facilities.

(K) A proposed financial plan that:

(i) identifies and quantifies all capital resources that are available to finance the CTP Facility and provides the terms, covenants, restrictions, encumbrances, or contingencies associated with each capital resource; and

(ii) identifies and quantifies the financial impact of the construction of the CTP Facility on the value, credit rating, and liquidity position of the transmission company, including, but not limited to scenarios, assumptions, and conclusions for expected cash flows, cost recovery, and expected return on investment.

(2) The Qualified TSP must establish that it has adequate financial resources as described below:

(A) The Qualified TSP or its parent corporation or controlling shareholder providing a guaranty to the Qualified TSP under subparagraph (B) of this paragraph must demonstrate an investment-grade credit rating as defined in subparagraph (C) of this paragraph and:

(i) tangible assets in excess of liabilities of at least $120,000,000 on its most recent audited financial statement; or

(ii) the following minimum financial ratios obtained from the TSP's most recently available financial statements:

(I) funds from operations-to-interest coverage of 1.5x;

(II) funds from operations-to-total debt of 10x; and

(III) total debt-to-total capital no greater than 65%.

(B) The Qualified TSP must demonstrate that its financial status would remain secure if it were awarded Designated TSP status by filing a financing commitment letter, line of credit, letter of

credit, or other appropriate financing vehicle that would serve to fund at least 60% of the initial cost of the relevant CTP Facilities.

(C) For a Qualified TSP to establish its investment-grade credit rating it may rely upon its own investment-grade credit rating or a bond, guaranty, or corporate commitment of an investment-grade rated company. The determination of such investment-grade quality will be based on the credit ratings provided by Standard & Poor's (S&P), Moody's Investor Services (Moody's), or any other nationally recognized rating agency including Fitch Ratings for financial institutions and A. M. Best for insurance companies. The minimum investment credit ratings that will satisfy the requirements of this paragraph include "BBB-" for S&P, "Baa3" for Moody's, or their financial equivalent. If the relied-upon rating agency suspends or withdraws the investment grade credit rating, the Qualified TSP must provide alternative financial evidence within ten days of such suspension or withdrawal.

(D) To the extent a Qualified TSP relies on an affiliated transmission or distribution utility for credit, investment, or other financing arrangements, it shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title (relating to Code of Conduct for Electric Utilities and their Affiliates).

(E) In addition to information otherwise required under this subsection, a Qualified TSP shall provide a summary of any history of bankruptcy, dissolution, merger, or acquisition of the Qualified TSP or any predecessors in interest.

(3) The commission shall select the owner of any facility that is identified in the Transmission Plan as requiring an upgrade to be the Designated TSP for such upgrade, unless the owner requests that a different TSP be selected.

(g) Performance of Designated TSP.

(1) When the Designated TSP files its CCN application with the commission, it shall provide the following information, in addition to the information required under other sections of this title.

(A) The estimated cumulative cost for the CTP Facility in the following categories for each three-month interval starting with CCN approval to the date the CTP Facility is placed in-service:

(i) CCN acquisition;

(ii) ROW and land acquisition;

(iii) engineering and design;

(iv) procurement of material and equipment; and

(v) construction of facilities. The commission shall approve an estimated cumulative cost for the CTP Facility.

(B) A schedule for the CTP Facility that provides major project milestones with dates and the percentage completion every three months from CCN approval to the date the CTP Facility is placed in-service for the following four major functions:

(i) engineering and design;

(ii) ROW and land acquisition;

(iii) material and equipment procurement; and

(iv) construction of facilities. The commission shall approve a schedule for the project.

(C) The estimated cumulative cost approved pursuant to subparagraph (A) of this paragraph and the schedule approved pursuant to subparagraph (B) of this paragraph shall form the performance plan addressed by subsection (h) of this section.

(2) The order granting a CCN may require the Designated TSP to provide a performance bond in the amount of 10% of the reasonable cost of the CTP Facility, as determined by the commission. The bond shall be subject to forfeiture if the commission finds that the TSP has failed to substantially meet a performance plan approved by the commission for the CTP Facility. The bond shall be submitted within 30 days of the issuance of a final, appealable order in the CCN case.

(3) After the commission grants the CCN for the CTP Facility, the Designated TSP shall file with the commission a status report every three months until the project has been placed in-service. The status report shall include actual costs and completion dates for major milestones that correspond to the costs categories and schedule approved under paragraph (2) of this subsection. The report shall also include a demonstration that the Designated TSP continues to comply with the financial standards prescribed by this section.

(4) During the construction of the CTP Facility, the Designated TSP shall file with the commission a detailed explanation of the reasons for any of the following deviations:

(A) any step in the schedule is exceeded by more than 60 days; or

(B) the total cost estimate at any step is exceeded by more than 5%.

(5) The commission may revoke the Designated TSP's CCN for the project for failure to meet the estimated cumulative cost or the schedule approved pursuant to this subsection.

(h) Performance Incentives.

(1) Within the time established in the final order in the CCN proceeding, the Designated TSP shall file detailed procurement and installation costs for each type of structure (tangent, 30-degree, and 90-degree) and the conductor that will be used for the project. If the estimated costs for the conductor and each structure are less than 95% or more than 105% of the corresponding costs estimated in the CTP Proposal, the Designated TSP shall provide a detailed explanation of the reason for the difference. The commission may adjust the estimated costs in the performance plan to reflect these changes. Any increase in the estimated cost may be approved only if the commission concludes that the revised costs differ from the costs submitted by the Designated TSP in connection with its application to be designated to construct, operate, and maintain CTP Facilities, for reasons beyond the Designated TSP's control and ability, with appropriate diligence, to estimate.

(2) Not later than six months after the in-service date of a CTP Facility the Designated TSP shall file information comparing the estimated cost and in-service date approved by the commission to the actual cost and in-service date. If the actual total project costs exceed the estimated total costs in the performance plan by 5% or more, the Designated TSP will be subject to a downward adjustment to its return on equity, or for an electric cooperative or municipal owned utility, the applicable debt coverage ratio. If the actual total project costs are less than the estimated total costs in the performance plan by 5% or more, the Designated TSP will qualify for an upward adjustment to its return on equity or applicable debt coverage ratio. If the actual in-service date is later than the in-service date in the performance plan by 60 or more days, the Designated TSP will be subject to a downward adjustment to its return on equity or applicable debt coverage ratio. If the actual in-service date is earlier than the in-service date in the performance plan by 60 or more days, the Designated TSP will qualify for an upward adjustment to its return on equity or applicable debt coverage ratio. Actual total project costs and in-service date reported by the Designated TSP will be subject to verification by the commission. The commission will adjust the cost or schedule benchmarks in the perfor-

mance plan if the Designated TSP proves that the actual cost or in-service date was adversely impacted by force majeure. For the purposes of this subsection, "force majeure" means a major event or combination of major events, including new or expanded state or federal statutory or regulatory requirements; hurricanes, tornadoes, ice storms, or other natural disasters; or acts of war, terrorism, or civil disturbance, beyond the control of the Designated TSP.

(A) If the Designated TSP qualifies for an upward adjustment of the rate of return under this subsection, its return on equity or applicable debt coverage ratio for the investment in this project will be increased by 50 basis points or 5%, respectively, for each 5% increment that the costs are below the estimated total costs in the performance plan and, additionally, for each 60-day increment that the actual in-service date is earlier than the in-service date in the performance plan, with a maximum adjustment of 200 basis points or 20%. This adjustment shall remain in effect through a rate rider for five years from the date the rates for the CTP Facility take effect.

(B) If the Designated TSP is subject to a downward adjustment of the rate of return under this subsection, its return on equity or the debt coverage ratio for the investment in this project will be decreased by 50 basis points or 5% respectively, for each 5% increment that the costs are above the estimated total costs in the performance plan and, additionally, for each 60-day increment that the actual in-service date is later than the in-service date in the performance plan, with a maximum adjustment of 200 basis points or 20%. This adjustment shall remain in effect through a rate rider for five years from the date the rates for the CTP Facility take effect.

(i) Filing requirements.

(1) A Designated TSP shall use the commission form entitled "Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. Subst. R. 25.174" when filing a CCN application for a CTP Facility.

(2) A Designated TSP filing a CCN application for a CTP Facility shall also file with the application all testimony in support of the application at the same time the application is filed.

(j) Procedures for petitions to be selected a Designated TSP. Following the initiation of a proceeding to select Designated TSPs to construct, operate and maintain CTP Facilities in accordance with subsection (d) of this section, Qualified TSPs may file an application to be designated to construct, operate and maintain the CTP Facilities included in a CTP project by the deadline established by the commission. The presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within 180 days after the deadline to file applications unless good cause exists for a different schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706224
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 936-7223

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SUBCHAPTER Q. SYSTEM BENEFIT FUND

16 TAC §§25.451, 25.454, 25.457

The Public Utility Commission of Texas (commission) proposes amendments to §25.451, relating to Administration of the System Benefit Fund; §25.454, relating to Rate Reduction Program; and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives. The proposed amendments will revise language in §25.454 regarding the calculation of the discount factors used in the rate reduction to reflect the fact that price-to-beat is no longer in effect; establish the method through which the Provider of Last Resort (POLR) rate will be determined for the purpose of calculating the discount factors; and set the discount factor for each service territory for a six-month period of time, with allowances for certain revisions. These proposed changes are expected to minimize the changes in discount factors throughout the year which may result from using the POLR rate as the reference rate for calculating low-income discounts. Pursuant to §25.43, relating to Provider of Last Resort (POLR), the calculation of the POLR rate includes an energy charge that is the sum over the billing period of the actual hourly Marginal Clearing Prices of Energy. Consequently, unless the POLR rate is calculated at or below the minimum POLR rate contemplated in §25.43, it is possible for the POLR rate in each territory to fluctuate throughout the year. Depending on the frequency and timing of corresponding changes to discount factors, this could cause confusion for customers, be administratively burdensome for retail electric providers (REPs), and may be difficult for the commission staff to audit to ensure that customers are getting the correct rate reduction by each REP in each territory.

The proposed amendments will also amend §25.454 to more clearly reflect the enrollment process; allow companies providing pre-pay service consistent with §25.498, relating to Retail Electric Service Using a Customer Prepayment Device or System, to document the rate reduction on the customer's payment confirmation rather than through a line-item discount on the bill; delete requirements and references that are no longer in effect; and revise §§25.451, 25.454, and 25.457 consistent with the Bill Payment Assistance provisions addressed in Project Number 33811. This rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 34887 is assigned to this proceeding.

Ms. Lauren Damen, Director of Retail Markets, Competitive Markets Division, has determined that, for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Damen has determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be for low-income customers to have more clarity as to the amount of low-income discounts to expect and to reduce the administrative burden on REPs of administering the low-income discount. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Damen has also determined that, for each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment im-

pact statement is required under Administrative Procedure Act (APA), Texas Government Code, §2001.022.

If requested, the commission staff will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code, §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, January 22, 2008, at 9:30 a.m. in the Commissioner's Hearing Room. The request for a public hearing must be received within 21 days after publication in the *Texas Register*.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 21 days after publication in the *Texas Register*. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 31 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 34887.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 2007): (1) §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; (2) §39.101(e) provides that the commission has the authority to adopt necessary or appropriate rules for minimum service standards, relating to customer deposits; and (3) §39.903 grants the commission the authority to adopt rules regarding programs to assist low-income electric customers on the introduction of customer choice.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.903.

§25.451. Administration of the System Benefit Fund.

(a) Purpose. The purpose of this section is to implement the system benefit fund, including its administration, setting its revenue requirement, fee collection, reporting procedures, and review and approval of the fund pursuant to the Public Utility Regulatory Act (PURA) [~~§39.901 and~~] §39.903.

(b) - (c) (No change.)

(d) System benefit fee. The commission shall set the amount of the system benefit fee for the next fiscal year at or before the last open meeting scheduled for July of each year.

(1) (No change.)

(2) The commission may, at any time during the fiscal year, review the revenues, fund balance, and projected disbursements, revise the system benefit fee amount, and issue an order for the remainder of the year to accomplish the purposes of PURA [~~§39.901 and~~] §39.903. The TDUs shall implement the new fee in billings to the REPs within 30 calendar days of the date such order is issued. Whenever the fee is changed, the TDUs shall file with the commission an updated rate schedule for inclusion in the TDU's tariff manual, reflecting the new fee.

(3) (No change.)

(e) Revenue requirement. The revenue requirement shall be an amount of revenue necessary to fund the purposes outlined in PURA §39.903 consistent with legislative appropriations and expected fund revenue, operating costs of the Rate Reduction Program and other obligations of the fund, a necessary fund reserve balance, and any other purpose required by statute or legislative appropriations.

(f) (No change.)

(g) Remittance of fees. Each TDU, MOU, or Coop collecting the system benefit fee from the REPs, MOUs, or Coops in its service area, shall remit the fees to the Comptroller on a monthly basis.

(1) (No change.)

[~~(2) Payments to the System Benefit Fund pursuant to PURA §39.352(g) shall be remitted to the Comptroller at the time of the filing of the annual report pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).~~]

(2) [~~(3)~~] The collecting utility shall account for all system benefit fees received from the REPs, MOUs, or Coops in its service area separately from any other account in its records.

(3) [~~(4)~~] Each TDU, MOU, or Coop collecting and remitting the system benefit fee to the Comptroller shall file with the commission at the time the money is remitted a report, on a commission-prescribed form, stating for each service territory the amount of the system benefit fee billed, the amount remitted to the Comptroller, and electric energy sold, in MWh. The report shall contain monthly amounts and year-to-date totals.

(h) (No change.)

(i) Reporting and auditing requirements. Each REP, and each MOU or Coop when applicable, providing rate reductions or one-time bill payment assistance to eligible customers shall keep records of such rate reductions and one-time bill payment assistance for at least three years from the date the rate reduction or one-time bill payment assistance is first provided to a customer to permit the commission or its agent to audit rate reduction and one-time bill payment assistance reimbursements. Reports filed under subsections (g) and (j) of this section and records relating to the identification of eligible customers shall also be subject to audit upon commission request.

(j) Reimbursement for rate reductions and one-time bill payment assistance. Each REP, or MOU or Coop, when applicable, shall submit to the commission a monthly activity report and request for reimbursement on a form prescribed by the commission. The commission's goal for the processing of a request for reimbursement is, not later than five business days after receipt of the monthly report, to prepare and deliver to the comptroller an authorization for reimbursement to the REP, MOU, or Coop. The Comptroller's goal for the processing of payments is to transfer the funds by the close of the next business day, following receipt of an authorization from the commission. The monthly activity report submitted by the REPs, MOUs, or Coops shall contain the following:

(1) - (2) (No change.)

(3) The aggregate electric energy consumption in kWh for all low-income customers enrolled in the rate reduction program for the reporting period;

(4) (No change.)

(5) The total amount of one-time bill payment assistance provided to customers in the reporting period and the number of customers to which assistance was provided, pursuant to §25.455 of this title (relating to One-Time Bill Payment Assistance Program), as well as pertinent customer information required by the commission-prescribed form. [~~The amount of the system benefit fee billed by and remitted to the TDU.~~]

(k) (No change.)

§25.454. Rate Reduction Program.

(a) (No change.)

(b) Application. This section applies to retail electric providers (REPs)[~~, as defined in Public Utility Regulatory Act §39.106,~~] that provide electric service in an area that has been opened to customer choice, or an area for which the commission has issued an order applying the system benefit fund or rate reduction. This section also applies to municipally owned electric utilities (MOUs) and electric cooperatives (Coops) on a date determined by the commission, but no sooner than six months preceding the date on which an MOU or a Coop implements customer choice in its certificated area unless otherwise governed by §25.457 of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives).

(c) Funding. The rate reduction requirements set forth by this subchapter are subject to sufficient funding and authorization to expend funds. In the event that funding and authorization to expend funds are not sufficient to administer the rate reduction program or fund rate reductions for customers, the following shall apply:

(1) (No change.)

(2) The requirements of the following sections of this title, insofar as they relate to the rate reduction benefit, are suspended when [~~until~~] sufficient funding and spending authority are not available:

(A) (No change.)

(B) §25.457(i) - (j) [~~(h) - (i)~~] of this title (relating to Implementation of the System Benefit Fee by Municipally Owned Utilities and Electric Cooperatives);

(C) - (D) (No change.)

(3) The requirements of §25.480(c)(1) of this title (relating to Bill Payments and Adjustments), insofar as they relate to the rate reduction benefit, are suspended if [~~until~~] an eligibility list is not available as provided in subsection (i) of this section.

(d) Definitions. The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Discount percentage--The percentage of discount established by the commission and applied to the minimum [~~lower of the price to beat (PTB) or~~] provider of last resort (POLR) rate in a particular service territory.

(3) - (5) (No change.)

(6) Minimum POLR rate--For the purposes of this section, the minimum POLR rate shall be the POLR rate posted on the commission's website on the Electricity Facts Label for each service territory for 1,000 kWh of usage.

(e) Rate reduction program. In each month for which funds are available for the low-income discount, all [~~All~~] eligible low-income customers as defined in §25.5 of this title (relating to Definitions) are to receive a rate reduction, as determined by the commission pursuant to this section, on their electric bills from their REP.

(1) Discount factors shall be determined in accordance with this paragraph, as the minimum POLR rate for each service territory multiplied by the approved discount percentage.

(A) [~~(1)~~] The commission shall periodically establish the [~~a~~] discount percentage. The discount percentage may be set at a level no greater than 20%.

(B) [~~(2)~~] The commission staff shall calculate a discount factor for each service territory and post the discount factors on the commission website (www.puc.state.tx.us) [~~the discount factor for an eligible low-income customer in accordance with this subsection~~]. Each discount factor shall be in effect from May through October or November through April, subject to revision pursuant to subsection (e)(2) of this section.

(2) The commission may revise the discount factors set pursuant to subsection (e)(1) of this section through a change to the discount percentage because of one of the following occurrences:

(A) The commission staff determines that there are sufficient remaining appropriations for the fiscal year to support an increase in the discount percentage without exceeding available appropriations for the fiscal year. This determination may be triggered by the routine review by commission staff of disbursements and remaining appropriations, or by a fluctuation of five percent or more of the POLR rate calculated pursuant to §25.43(k) of this title, in any month during the six month period.

(B) The commission staff determines that there are insufficient remaining appropriations for the fiscal year, and a decrease to the discount percentage is necessary to ensure that funds spent do not exceed appropriations for the fiscal year.

[~~(A) The discount factor shall be separately calculated for each transmission and distribution utility service area and shall be recalculated when the PTB or POLR rate changes or the commission revises the discount percentage.~~]

[~~(B) The discount factor shall be calculated by applying the discount percentage to the lower of the POLR rate or the standard residential PTB rate. The discount amount shall reflect any seasonal variation in the lower of the PTB or the POLR rate.~~]

[~~(C) If the discount factor changes for any area because of a change to the discount percentage or a change to the PTB or POLR rate for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website.~~]

(3) All REPs shall provide the rate reduction to eligible low-income customers.

(A) The discount factors posted on the commission's website shall be used to calculate the rate reduction for each eligible low-income customer's bill. If the discount factor changes for any area, REPs shall implement the resulting change in the discount factor in their billings to customers within 30 calendar days of the date the commission posts the revised discount factor to its website, or on the effective date of the discount factors, whichever is later.

(B) (No change.)

(C) The customer's discount amount shall be clearly identified as a line item on the electric portion of the customer's bill, including the description "LITE-UP Discount." If a monthly bill is not issued as provided by §25.498 of this title (relating to Retail Electric Service Using a Customer Prepayment Device or System), the customer's receipt or confirmation of payment, or detailed information accessed by confirmation code, as described by §25.498 of this title, shall indicate that the discount was applied to the customer's charges with the words "LITE-UP" or "LITE-UP Discount."

(D) (No change.)

(f) Customer enrollment. Eligible customers may be enrolled in the rate reduction program through automatic enrollment or self-enrollment.

(1) (No change.)

(2) Self-enrollment is an alternate enrollment process available to eligible electric customers who are not automatically enrolled and whose combined household income does not exceed 125% of federal poverty guidelines or who receive food stamps or medical assistance from HHSC. The self-enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) - (B) (No change.)

(C) Providing information to customers regarding the process of enrolling in the low-income discount program; [~~and~~]

(D) Determining customers' eligibility by reviewing information submitted through self-enrollment forms and determining whether the applicant meets the program qualifications; and

(E) Matching [~~matching~~] customer information submitted through self-enrollment forms with customer data provided by REPs, creating files of matching customers, enrolling matching customers in the rate reduction programs, and notifying the REPs of their eligible customers [~~and reviewing proof of income documentation submitted by customers~~].

(3) In determining customers' eligibility in the self-enrollment process, LIDA shall require that customers submit with a self-enrollment form proof of income in the form of copies of tax returns, pay stubs, letters from employers, or other pertinent information and shall audit statistically valid samples for accuracy. If a person who self-enrolls claims to be eligible because of participation in a qualifying program, LIDA shall require the customer to submit a copy of proof of enrollment or eligibility letter that indicates enrollment of the applicant in the qualifying program.

(4) - (6) (No change.)

(g) (No change.)

(h) Confidentiality of information. [~~All data transfers shall be conducted under the terms and conditions of confidentiality agreements to protect customer privacy and competitively sensitive information.~~]

(1) The data acquired from HHSC pursuant to this section is subject to a HHSC confidentiality agreement [~~and shall only be used for the purposes of enrolling customers in the rate reduction program, providing rate reductions to customers, resolving problems, and other purposes directly related to the program~~].

(2) All data transfers from REPs to LIDA pursuant to this section shall be conducted under the terms and conditions of a standard confidentiality agreement to protect customer privacy and REP's competitively sensitive information. [~~The data acquired from REPs shall be used only for the purposes of enrolling customers into LITE-UP, providing rate reductions to customers, resolving problems, and other purposes directly related to the program.~~]

(3) LIDA may use information obtained pursuant to this section only for purposes prescribed by commission rule, including use in determining eligibility for assistance under §25.455 of this title (relating to One-Time Bill Payment Assistance Program) [~~shall treat information relating to customer eligibility for the rate reduction as proprietary and confidential data and may not use it for any other purpose~~].

(i) Eligibility List for Continuation of Late Penalty Waiver Benefits.

(1) In the event that funding and authorization to expend funds are not sufficient to provide rate reductions for low-income customers that can be reimbursed from the system benefit fund, the commission may, in its discretion, require LIDA to maintain a list of low-income customers who would otherwise be eligible for automatic enrollment in the rate reduction program under subsections [~~subsection~~] (f)(1) and (f)(2) of this section if funds were available. The procedures set forth in subsections [~~subsection~~] (f)(1) and (f)(2) of this section will be used to the extent practicable. In addition to the requirements in this section, program responsibilities for LIDA may be established in the commission's contract with LIDA; and program responsibilities for tasks undertaken by HHSC may be established in a memorandum of understanding between the commission and HHSC. To assist the commission in implementing this provision, REPs shall upon request:

(A) - (E) (No change.)

(2) - (3) (No change.)

(j) Deposit Installment Benefits.

(1) (No change.)

(2) If [~~Effective June 1, 2006, if~~] LIDA is not maintaining a list of eligible customers as described in subsection (f) or subsection (i) of this section, a REP shall extend the option to pay deposits over $50 in two installments to any residential customers or applicants who qualify for the rate reduction program. The REP may, on a non-discriminatory basis, require the customer or applicant to provide documentation of eligibility that the REP determines to be appropriate [~~and that the REP requests on a non-discriminatory basis~~]. The REP shall provide notice of this option in any written notice requesting a deposit from a customer. This paragraph supersedes the provisions of §25.478(c)(3) and (d)(3) of this title that require payment of the entire amount of a deposit within ten days.

(k) (No change.)

§25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.

(a) - (c) (No change.)

(d) Billing requirements. Each retail electric provider (REP), MOU, and Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or a Coop shall comply with the billing requirements in §25.451(h) of this title.

(e) (No change.)

(f) Service area [~~Area~~] revenue requirements. The commission staff shall calculate the amount available for low-income discounts or one-time bill payment assistance for the service area of each MOU and Coop based on the projected system benefit fee revenue from the service area of the MOU or Coop and any reduction in the fee for education or low-income programs approved by the commission. The commission shall, on a request by an MOU or a Coop, reduce the system benefit fee, imposed on the requesting entity's retail customers, by the amount expended by the requesting MOU or Coop, or their retail customers, for local, low-income programs and local programs that educate customers about the retail electric market in a neutral and non-promotional manner. The qualifying low-income programs must reduce the cost of electricity to the recipients of such programs and be targeted at customers whose total household income does not exceed 125% of federal poverty guidelines. The amount available for low-income discounts and one-time bill payment assistance shall be established and may be revised by the commission in the following manner:

(1) - (2) (No change.)

(g) (No change.)

(h) Allocation of revenue requirement. An MOU or Coop shall allocate its service area revenue requirement established by the commission staff under subsection (f) of this section among those programs provided by PURA §39.903(e) for which funds have been authorized. The MOU or Coop shall be responsible for determining such allocation.

(i) [~~(h)~~] Discount factor and rate reduction. An MOU or a Coop shall establish a discount factor, consistent with the amount of its service area revenue requirement allocated by the MOU or Coop by the rate reduction [~~requirements established by the commission under subsection (f) of this section,~~] for [~~its~~] low-income customers in its service area. [~~The discount factor will be calculated on the basis of the standard retail service package established under PURA §40.053 or §41.053, as appropriate.~~] Each REP, MOU, or Coop that bills retail customers for electric power and energy shall apply a rate reduction to the bills of eligible low-income customers based on the discount factor established by the MOU or Coop in effect during the billing cycle in which the bill is rendered, multiplied by the customer's total consumption (kWh) for the billing period. If an eligible customer is rebilled, the discount that was in effect during the affected billing cycle will be applied [~~and calculated in accordance with §25.454(d)(3)(B) of this title (relating to the Rate Reduction Program)~~]. The rate reduction will be clearly identified as a line item on the electric portion of the customer's bill. An MOU or Coop may permit the rate reduction to be identified for a pre-pay customer in accordance with §25.454 of this title (relating to the Rate Reduction Program).

(j) [~~(i)~~] Reimbursement. Each REP, and MOU or Coop that provides rate reduction discounts or one-time bill payment assistance in the service area of an MOU or Coop is entitled to reimbursement under §25.451(j) of this title for the rate reductions and one-time bill payment assistance it has [~~they have~~] provided to eligible [~~low-income~~] customers and shall file a monthly activity report in order to request reimbursement.

(k) [~~(j)~~] Monthly reporting requirements. If an MOU or a Coop continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the MOU or Coop shall file with the commission two reports. One report will identify the amount of system benefit fee collected and paid by the reporting entity's retail customers [~~pursuant to §25.451(i)(1) of this title~~]; the other report shall identify the amount of system benefit fee paid by the transmission and distribution only customers [~~pursuant to §25.451(i)(2) of this title~~]. Both reports shall be filed with the commission at the time the system benefit fee is paid pursuant to §25.451(g) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706180
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.20

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board (Coordinating Board, THECB, or Board) proposes the repeal of §§7.1 - 7.20, concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas. Specifically, this repeal is proposed because new §§7.1 - 7.24 are proposed to replace the repealed sections.

William Franz, General Counsel, and Dr. Glenda Barron, Associate Commissioner, have determined that for each year of the first five years the repeal is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the repeal of the sections.

Mr. Franz and Dr. Barron have also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal of the sections will be the lowering of barriers to entry in Texas for Private and Out-of-State Public Postsecondary Educational Institutions while at the same time maintaining quality education standards. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed, unless, in their discretion, they avail themselves of an alternate route to certification, in which case their costs are variable depending on the number of students in their programs. There is no impact on local employment.

Comments on the proposal may be submitted to William Franz, General Counsel, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, Title 3, Chapter 61, Subchapter G, §§61.301 - 61.321, as amended, which provides the Coordinating Board with the authority to permit Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas to award degrees and which also provides the Board with authority to regulate the granting of degrees by Private and Out-of-State Public Post-Secondary Educational Institutions operating in Texas. William Franz, General Counsel, THECB, has reviewed the proposal and found it to be within the THECB's authority to adopt.

The repeal affects Texas Education Code, Title 3, Chapter 61, Subchapter G, as amended.

§7.1. Purpose.
§7.2. Authority.
§7.3. Definitions.
§7.4. Exemptions, Revocation of Exemptions, and Certificates of Authorization.

§7.5. Administrative Procedures Related to Certification of Nonexempt Institutions.

§7.6. Certificate of Authority--Eligibility, Applications, Renewals, and Amendments.

§7.7. Standards for Certificates of Authority.

§7.8. Certificate of Registration for Agents of Nonexempt Institutions.

§7.9. Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions.

§7.10. Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

§7.11. Revocation of Certificates of Nonexempt Institutions and Agents.

§7.12. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

§7.13. Information Provided to Protect Public from Fraudulent, Substandard, or Fictitious Degrees.

§7.14. Prohibitions.

§7.15. Duties upon Dissolution of an Institution.

§7.16. Procedures Related to the Assessment of Administrative Penalties.

§7.17. Administrative Penalties.

§7.18. Injunctions.

§7.19. Civil Penalties.

§7.20. Deceptive Trade Practices Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2007.

TRD-200706311
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 24, 2008
For further information, please call: (512) 427-6114

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19 TAC §§7.1 - 7.24

The Texas Higher Education Coordinating Board (Coordinating Board, THECB, or Board) proposes new §§7.1 - 7.24, concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas. Specifically, several new definitions, relating to recognition of accreditors and routes to alternative certification, have been added in §7.3. Current recognized accrediting agencies remain so and are embodied in §7.5. A new §7.4 is proposed as a means of recognizing accrediting agencies so long as they meet certain standards. Subsequent sections have been renumbered and clarifying amendments have been made to various rules, e.g., §§7.5 - 7.11. New §§7.22 - 7.24 establish alternative routes to certification in an effort to remove potential barriers to entities operating in Texas or desiring to do so while at the same time preserving quality education standards.

William Franz, General Counsel, and Dr. Glenda Barron, Associate Commissioner, have determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Franz and Dr. Barron have also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be the lowering of barriers to entry in Texas for Private and Out-of-State Public Postsecondary Educational Institutions while at the same time maintaining quality education standards. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed, unless, in their discretion, they avail themselves of an alternate route to certification, in which case their costs are variable depending on the number of students in their programs. There is no impact on local employment.

Comments on the proposal may be submitted to William Franz, General Counsel, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Title 3, Chapter 61, Subchapter G, §§61.301 - 61.321, as amended, which provides the Coordinating Board with the authority to permit Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas to award degrees and which also provides the Board with authority to regulate the granting of degrees by Private and Out-of-State Public Post-Secondary Educational Institutions operating in Texas. William Franz, General Counsel, THECB, has reviewed the proposal and found it to be within the THECB's authority to adopt.

The new sections affect Texas Education Code, Title 3, Chapter 61, Subchapter G, as amended.

§7.1. Purpose.

This subchapter clarifies the standards and details the process by which nonexempt private postsecondary educational institutions may be granted by the Board a certificate of authority to offer degrees or to offer credits toward degrees and to use certain academic terms within the state. These rules proscribe certain behavior, and specify the sanctions that may be imposed for violations of the applicable rules and statutes.

§7.2. Authority.

These rules relate to the Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.319 and Subchapter H, §§61.401 - 61.405, which regulates the awarding or offering of degrees, awarding or offering credit toward degrees, and the use of certain academic terms by private and out-of-state public postsecondary educational institutions.

§7.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accreditation--The status of public recognition that an accrediting agency grants to an educational institution.

(2) Accrediting agency--A legal entity that conducts accreditation activities through voluntary peer review and makes decisions concerning the accreditation status of institutions.

(3) Agent--A person employed by or representing a postsecondary educational institution within or without Texas who:

(A) solicits any Texas student for enrollment in the institution;

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who are without Texas.

(4) Alternative Certificate of Authority--A type of certificate of authority for approval of institutions of higher education, with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees that is governed by flexible, streamlined procedures, emphasizing the importance of innovation, consumer choice, and measurable outcomes in the delivery of educational services.

(5) Board--The Texas Higher Education Coordinating Board.

(6) Branch campus, extension center, or other off-campus unit--Any institution or part of an institution offering or proposing to offer away from the home campus more than occasional courses or courses leading to the granting of a degree without the necessity for courses to be taken at the main campus.

(7) Certificate of authority--The Board's approval of institutions of higher education (other than exempt institutions), with operations in the state of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.

(8) Certificate of authorization--The Board's acknowledgment that an institution is qualified for an exemption from the regulations herein.

(9) Commissioner--The Commissioner of Higher Education.

(10) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including "associate", "bachelor's", "master's", "doctor's" and their equivalents and foreign cognates, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic degree-level program by accrediting agencies recognized by the Board.

(11) Educational or training establishment--An enterprise offering a course of instruction, education, or training that the establishment does not represent to be applicable to a degree.

(12) Exempt institution--An institution that is accredited by an agency recognized by the Board under §7.5(a) of this title (relating to Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization) or an entity described in the Texas Education Code, §61.003(8).

(13) Fictitious degree--A counterfeit or forged degree or a degree that has been revoked.

(14) Fraudulent or substandard degree--A degree conferred by a person who, at the time the degree was conferred, was:

(A) operating in this state in violation of this subchapter;

(B) not eligible to receive a certificate of authority under this subchapter and was operating in another state in violation of a law regulating the conferral of degrees in that state or in the state in which the degree recipient was residing or without accreditation by a recognized accrediting agency, if the degree is not approved through the review process described by §7.13 of this title (relating to Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority); or

(C) not eligible to receive a certificate of authority under this subchapter and was operating outside the United States, and whose degree the Board, through the review process described by §7.13 of this title, determines is not the equivalent of an accredited or authorized degree.

(15) Home campus--The headquarters of an institution, such location to be determined as a matter of fact by the Commissioner based upon consideration of information such as, but not limited to the following:

(A) where the institution is chartered;

(B) the site, campus or city where the principal or chief executive's offices are located;

(C) the site, campus or city where the institution conducts the preponderance of its instructional activities; and

(D) any other pertinent and material facts.

(16) Occasional courses--Courses offered not more than twice at any given location in the state.

(17) Out-of-state public institution of higher education--Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(18) Person--Any individual, firm, partnership, association, corporation, enterprise, or other private entity or any combination thereof.

(19) Private postsecondary educational institution or institution--An educational institution which:

(A) is not a public junior college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(20) Program or Program of study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(21) Protected term--the term "college," "university," "seminary," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate, or equivalents.

(22) Recognized accrediting agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(23) Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(24) The subchapter--Texas Education Code, Title 3, Chapter 61, Subchapter G, as amended, having an effective date of June 21, 1975.

§7.4. Recognition of Accrediting Agencies.

The Texas Higher Education Coordinating Board may recognize accrediting agencies with a commitment to academic quality and student achievement that demonstrate, through an application process, compliance with the following criteria:

(1) Eligibility. The accrediting agency's application for recognition must demonstrate that the entity:

(A) Is recognized by the Secretary of Education of the United States Department of Education as an institutional accrediting agency authorized to accredit educational institutions that offer the associate degree or higher;

(B) Is applying for the same scope of recognition as that for which it is recognized by the Secretary of Education of the United States Department of Education;

(C) Accredits higher education institutions that have legal authority to confer higher education degrees;

(D) Requires an onsite review by a visiting team as part of initial and continuing accreditation of educational institutions;

(E) Has policies or procedures that ensure the entity will promptly respond to requests for information from the Board; and

(F) Has sufficient resources to carry out its functions.

(2) Continuing Recognition. To receive continuing recognition from the Board, the accrediting agency must:

(A) Provide the Board with current standards used by the entity in initial and ongoing accreditation reviews of educational institutions and invite the Board to participate in such reviews;

(B) Provide the Board with written evidence of continuing recognition by the Secretary of Education of the United States Department of Education. Loss of recognition from the Secretary automatically results in loss of Board recognition at the same time;

(C) Provide a list of Texas educational institutions accredited by it; notify the Board in writing of any change to its list of Texas accredited institutions within ten (10) days of the change;

(D) Notify the Board of any complaints concerning a Texas institution accredited by it and the disposition of those complaints; and

(E) Seek Board approval for any expansion of its recognized scope of accreditation authority.

§7.5. Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization.

(a) The provisions of this subchapter do not apply to:

(1) The home campus of an institution which is fully accredited by a recognized accrediting agency. For purposes of the exemption, the Board currently recognizes the following accrediting agencies: the Commission on Higher Education, Middle States Association of Colleges and Schools; the Commission on Institutions of Higher Education, New England Association of Schools and Colleges; the Commission on Institutions of Higher Education, North Central Association of Colleges and Schools; the Northwest Commission on Colleges and Universities, the Commission on Colleges, Southern Association of Colleges and Schools; the Accrediting Commission for Community and Junior Colleges and Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges; the Association of Biblical Higher Education (undergraduate only); and the Association of Theological Schools in the United States and Canada.

(2) A branch campus, extension center, or other off-campus unit operated by a private or independent institution of higher education as defined by Texas Education Code, §61.003.

(3) An institution or degree program that has received approval by an agency of the State of Texas authorizing the graduates of the institution to take a professional or vocational state licensing examination administered by that agency. The granting of permission by a state agency to a graduate of an institution to take a licensing examination does not by itself constitute approval of the institution or degree program required for an exemption under this subsection.

(b) The exemptions provided by subsection (a) of this section apply only to the degree level for which the programs or the institution is accredited or approved, as applicable, and if an institution offers to award a degree at a level for which it is not accredited or approved by the appropriate agency of the State of Texas, the exemption does not apply.

(c) The Commissioner may issue a certificate of authorization to grant degrees to an exempt institution, upon the institution's application and demonstration that it qualifies for an exemption under subsection (a)(1) of this section, as limited by subsection (b) of this section.

(d) A new institution may not presume exempt status and offer to award degrees or courses leading to degrees until it has applied for and been granted a certificate of authorization by the Commissioner.

(e) An exempt institution continues in that status only so long as it maintains accreditation by a recognized accrediting agency or otherwise meets the provisions of subsection (a) of this section.

(f) Revocation of an exemption.

(1) If the Commissioner receives credible evidence that an institution is no longer qualified for an exemption, he shall notify the institution that its exempt status is revoked, and that the institution is subject to the requirements Chapter 61 of the Texas Education Code, and of this subchapter.

(2) Upon receipt of the notice of revocation, the institution must cease granting or awarding degrees in Texas until it has either been granted a certificate of authority to grant degrees, or has received a determination that it did not lose its qualification for an exemption.

(3) Within 10 days of its receipt of the Commissioner's notice, the institution must respond and offer proof of its continued qualification for the exemption.

(4) After reviewing the evidence, the Commissioner will issue a notice of determination, which in the case of an adverse determination, shall contain information regarding the reasons for the denial, and the institution's right to a hearing.

(5) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days

of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.6. Administrative Procedures Related to Certification of Nonexempt Institutions.

(a) The Board may issue to a nonexempt institution a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if the Board finds that the institution meets the standards established herein.

(b) Certification Advisory Council.

(1) The Board shall appoint a certification advisory council to advise the Board on standards and procedures related to certification of private, nonexempt postsecondary educational institutions, to assist the Commissioner in the examination of individual applications for certificates of authority, and to perform other duties related to certification that the Board finds to be appropriate.

(2) The council shall consist of six members with experience in higher education, three of whom must be drawn from exempt private institutions of higher education in Texas.

(3) The members shall be appointed for two year fixed and staggered terms.

(c) Fees.

(1) Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for certificates of authority, which shall be equal to the average cost of evaluating the applications. The fee shall include the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members, if an onsite review is conducted. For an additional fee not to exceed $500, the Board shall provide review of applications within 120 days.

(2) Each biennium, the Commissioner shall also set the fees for amendments to certificates of authority; initial reviews of branch campuses or extension centers; site visits to branch campuses or extension centers; and certificates of registration of agents.

(3) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(d) Board's review of applications.

(1) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, may visit the institution and conduct an onsite survey to evaluate the application for a certificate of authority. The visiting team will be composed of people who have experience and knowledge relating to institutions of higher education.

(2) The visiting team will prepare a written report of its findings regarding the institution's ability to meet the standards for a certificate of authority. This report will be provided to the applicant institution, which shall have 30 days within which to submit a written response.

(3) The certification advisory council will review the findings of the visiting team and the response of the institution and submit to the Commissioner a recommendation concerning the application.

(4) The Commissioner will forward to the Board the recommendation of the advisory council with his endorsement or with an alternate recommendation.

(5) Upon approval of the Board to award a certificate of authority to an institution, the Commissioner will act immediately to prepare and forward the certificate. It shall state, at a minimum, that the institution is authorized to grant certain degrees, the issue date, and the period for which the certificate is valid.

(6) If the Board denies an institution's application for a certificate of authority, or for renewal of its certificate of authority, the Commissioner shall notify the institution in writing of the denial and of the reasons for the denial.

(A) The institution will not be eligible to reapply for a period of 180 days.

(B) Until the certificate of authority is reinstated, the institution may not grant degrees or receive payments from students for courses which may be applicable toward a degree.

(C) The subsequent application must show, in addition to all other requirements described herein, correction of the deficiencies which led to the denial.

(D) The period of time during which the institution does not hold a certificate of authority shall not be counted against the 8-year period within which the institution must achieve accreditation from a recognized accrediting agency absent sufficient cause, as described in §7.7(c)(3) of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments); the time period begins to run again upon reinstatement.

(7) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(e) Terms and limitations of a certificate of authority.

(1) The certificate of authority to grant degrees is valid for a period of two years from the date of issuance.

(2) Certification by the State of Texas is not accreditation, but merely a protection of the public interest while the institution pursues accreditation from a recognized agency, within the time limitations expressed in §7.7(c)(3) of this title. Therefore, the institution awarded a certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple permission to operate and grant certain specified degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(f) Recognition of Accrediting Agencies. The Board recognizes accrediting agencies for purposes of this section provided they can demonstrate they meet the criteria listed below.

(1) The accrediting agency must be recognized by the Council for Higher Education Accreditation or its successor and by the United States Department of Education.

(2) The accrediting agency's standards must be at least as comprehensive and rigorous as the standards listed in §7.8 of this title (relating to Standards for Certificate of Authority) and be as rigorously applied.

§7.7. Certificate of Authority--Eligibility, Applications, Renewals, and Amendments.

(a) Eligibility to apply. The Board will accept applications for a certificate of authority only from those institutions:

(1) proposing to offer a degree or credit courses alleged to be applicable to a degree; and

(2) which have been in operation for a minimum of two years. As a minimum, "in operation" means to have assembled a governing board, developed policies, materials, and resources sufficient to satisfy the requirements for a certificate of authority, and either have enrolled students and conducted classes or accumulated sufficient financing to do so for at least one year upon certification based on reasonable estimates of projected enrollment and costs. Sufficient financing may be demonstrated by proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract with a private association, partnership, corporation, or other entity whose membership is comprised of higher education institutions, which is:

(A) In a form acceptable to the Board; and

(B) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of a Certificate of Authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the guaranteeing entity will assume.

(b) Application for certificate of authority.

(1) Institutions seeking a certificate of authority are urged to contact the Board's Institutional Certification Office before filing a formal application.

(2) Applications must be submitted with an original and four copies and accompanied by the fee described in §7.6(c) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(3) Documentary evidence of compliance with subsection (a)(2) of this section must be filed with the application.

(4) An institution must be fully operational as of the date of the on-site evaluation; i.e., it must have in-hand or under contract all the human, physical, administrative, and financial resources necessary to demonstrate its capability to meet the standards for nonexempt institutions. The conditions found at the institution as of the date of the on-site evaluation visit will provide the basis for the visiting team's evaluation and report, the certification advisory council's recommendation, the Commissioner's recommendation, and the Board's determination of the institution's qualifications for a certificate of authority.

(c) Renewal of certificate of authority.

(1) At least 180 days, but no more than 210 days, prior to the expiration of the current certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in §7.6(c) of this title.

(2) The application for renewal of the certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application, except that the evaluation will include the institution's record of improvement and progress toward accreditation.

(3) An institution may be granted consecutive certificates of authority for no longer than eight years. Absent sufficient cause, at the end of the eight years, the institution must be accredited by a recognized accrediting agency.

(4) Subject to the restrictions of paragraph (3) of this subsection, the Board shall renew the certificate if it finds that the institution has maintained all requisite standards.

(5) The Board shall consider the application of any accreditation standard that prohibits accreditation of an institution solely on the basis of religious policies practiced by the institution as sufficient justification for extending the institution's eligibility for certification to grant degrees of a religious nature only, if the institution:

(A) has applied for and pursued accreditation in good faith;

(B) meets all other standards at the level of accreditation; and

(C) satisfies all other requirements of the Board.

(d) Amendments to a certificate of authority.

(1) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by its current certificate may file an application for amendment, on forms provided by the Board upon request. An institution may begin operating such a program upon filing the application, and the application shall be deemed to be granted if not rejected by the Board within 120 days.

(2) Applications for amendment shall be accompanied by the fee described in §7.6(c) of this title.

(3) Unless the Board finds that the new program of study does not meet the required standards, the Board shall amend the institution's certificate accordingly.

(e) Authority to represent transferability of course credit. Any institution as defined in §7.3 of this title (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(1) the other institution is named in such representation, and is accredited by an accrediting agency listed in §7.5(a)(1) of this title (relating to Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization) or has a certificate of authority;

(2) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(3) the written agreement between the institution subject to these rules and the accredited institution is approved by both institutions' Boards of trustees in writing, and is filed with the Board.

(f) Duty to Report.

(1) Institutions holding a certificate of authority will be required to:

(A) furnish a list of their agents to the Board; and

(B) maintain records of students enrolled, credits awarded, and degrees awarded, in a manner specified by the Board.

(2) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which

the certificate was granted. For purposes of this provision, administrative personnel consists only of individuals in a leadership role that involves setting institutional policies. For purposes of this provision, facilities consist only of campuses taken as a unit. Notification is only required if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported. For purposes of this provision, changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of a faculty member shall trigger notification.

(g) If an order, decision, or determination made pursuant to this section is adverse to an institution, the reasons therefore shall be detailed in a notice to the institution. The order, decision, or determination shall become final and binding unless, within 45 days of its receipt of the adverse order, decision, or determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.8. Standards for Certificates of Authority.

The decision to grant a certificate of authority to an institution will be based on its demonstrated compliance with the following standards. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by regional and specialized accrediting bodies and the academic and professional societies which have established standards for their members' programs, such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable ordinances and laws, including the rules and regulations adopted to administer those ordinances and laws. The institution shall demonstrate compliance with the Texas Education Code, Chapter 132 by supplying a copy of a certificate of approval to operate a career school or college school or a letter of exemption from the Texas Workforce Commission.

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board.

(B) The chief academic officer shall hold an earned doctorate awarded by an institution accredited by an agency recognized by the Board or from a foreign institution demonstrated to be equivalent to an accredited institution, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, service, academic freedom and responsibility, and tenure (where applicable); and the promotion of student success.

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) Governing Board. The institution shall have a governing board consisting of at least three members. The institution's governing board shall be an active policy-making body, focused on promoting the mission of the institution, and shall exercise its authority to ensure that the mission of the institution is carried out. Members of the Board shall represent the interests of the institution's constituencies of faculty, students, and supporters.

(4) Distinction of Roles. There shall be sufficient distinction among the roles and personnel of the governing Board of the institution, the administration, and faculty to ensure their appropriate separation and independence.

(5) Financial Resources and Stability. The institution shall have adequate financial resources and financial stability to provide education of good quality and to be able to fulfill its commitments to students. The institution shall have sufficient reserves, line of credit, or surety instrument so that, together with tuition and fees, it would be able to complete its educational obligations to currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a not-for-profit institution shall be kept in accordance with the guidelines of the National Association of College and University Business Officers as set forth in College and University Business Administration (Sixth Edition), or such later editions as may be published. An annual independent audit of all fiscal accounts of the educational institution shall be authorized by the governing board and shall be performed by a properly authorized certified public accountant.

(7) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(8) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification and by assessing the academic skills of each entering student with an instrument approved in §4.56 of this title (relating to Assessment Instruments), and otherwise complying with §§4.51 - 4.59 of this title (relating to the Texas Success Initiative). If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The institution shall provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(9) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member teaching in an academic associate or baccalaureate level degree program shall have at least a master's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member teaching technical or vocational courses in a vocational associate degree program, or technical and vocational courses that academic associate or baccalaureate students may choose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency at least three years of full-time direct or closely related experience in the discipline being taught.

(C) Each faculty member teaching general education courses in a vocational associate degree program shall have at least a baccalaureate's degree from an institution accredited by a recognized accrediting agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Graduate-level degree programs shall be taught by faculty holding doctorates, or other degrees generally recognized as the highest attainable in the discipline, or closely related discipline, awarded by institutions accredited by an agency recognized by the Board.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work experience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. The justification for such appointment shall be fully documented. The Coordinating Board may review the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(10) Faculty Size. There shall be a sufficient number of faculty holding teaching appointments who are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. At the associate and baccalaureate levels, there shall be at least one full-time faculty member in each program. At the graduate level, there shall be at least two full-time faculty members in each program.

(11) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion, tenure, and non-renewal or termination of appointments, including for cause, shall be clearly stated and published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document to be given to that faculty member, with a copy to be retained by the institution.

(12) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed 25 percent of all courses.

(B) An academic associate degree must consist of at least 60 semester credit hours or 90 quarter credit hours and not more than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least 120 semester credit hours or 180 quarter credit hours and not more than 139 semester credit hours or 208 quarter credit hours. A master's degree must consist of at least 30 semester credit hours or 45 quarter credit hours and not more than 36 semester credit hours or 54 quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(13) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least 20 semester credit hours or 30 quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least 25 percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution; and

(iii) the providing institution shall be accredited by a recognized accrediting agency.

(14) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the advanced place-

ment program (AP) or the college level examination program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than 15 semester credit hours or 23 quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(15) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(16) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(17) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(18) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a printed or electronically published catalog containing, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) a statement of Texas Success Initiative requirements;

(xvi) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvii) any disclosures specified by the Board or defined in Board rules. If the catalog is made available in only an electronic format, the institution must preserve at least one printed copy thereof for at least ten years.

(C) The cancellation and refund policy of the institution shall be fair and shall be applied equitably.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program.

(E) Any special requirements, or limitations of program offerings, for the students at the Texas branch must be made explicit in

writing. This may be accomplished by either a separate section in the catalog or a brochure separate from the catalog. However, if a brochure is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(19) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(20) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied in print or electronically to each student upon enrollment in the institution.

(21) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

§7.9. Certificate of Registration for Agents of Nonexempt Institutions.

(a) A person desiring to solicit students for enrollment, or to accept funds from Texas students, or otherwise to perform services as an agent of a nonexempt institution pursuant to the provisions of the Texas Education Code, Title 3, Chapter 61, Subchapter G and this subchapter, shall make application for a certificate of registration on forms that will be provided by the Board upon request.

(b) The application shall be accompanied by the fee described in §7.6(c) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(c) Upon request of the Commissioner or the Commissioner's designee, the agent shall provide sufficient evidence of good character.

(d) The agent's certificate of registration shall be issued for a five-year period.

(e) If the Commissioner denies the application for a certificate of registration, or a renewal of the certificate of registration, the applicant shall be notified in writing, and shall be given the reasons for the denial. Additionally, the Commissioner shall notify the institution or institutions which the agent represented or proposed to represent, according to the records of the Board, in the same manner.

(f) At least 60 days, but no more than 120 days, prior to the expiration of an agent's certificate, the agent shall complete and file with the Board an application for renewal, accompanied by the registration fee described in §7.6(c) of this title.

(g) If a determination under this section is adverse to a person or institution, it shall become final and binding unless, within 45 days of the receipt of the adverse determination, the person or institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.10. Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units.

(a) Off-Campus Operations.

(1) A nonexempt institution may not operate a branch campus.

(2) A private postsecondary institution must be approved by the Board to operate a branch campus, extension center, or other off-campus unit in Texas, except as noted in §7.5(a)(2) of this title (relating to Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions and Certificates of Authorization).

(3) An institution with off-campus offerings that approach the scale of a branch campus, extension center, or other off-campus unit, as defined in §7.3 of this title (relating to Definitions), must submit to the Board a description of its plans, including such information as requested on an application form, to be furnished by the Board upon request.

(4) On receipt of an acceptable application and the application fee for initial review of a branch campus or extension center listed in §7.6(a) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions), the Commissioner may authorize the institution to begin operations at the branch campus, on a temporary basis, pending a formal review and evaluation.

(5) Formal Review and Evaluation.

(A) Accreditor's on-site review and evaluation. If the applicant institution is accredited by a recognized accrediting agency, it shall inform its recognized accreditor of the institution's temporary authorization from the Board to begin operations, as provided in paragraph (4) of this subsection, so that the accreditor may conduct a site visit at the branch campus or extension center to verify compliance with that accreditor's criteria for branch campuses.

(i) An exempt institution shall submit to the Board the report of the recognized accreditor's review and evaluation.

(ii) After examining the report of the recognized accreditor concerning an exempt institution, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary authorization of the branch campus or extension center.

(iii) Final approval by the accreditor of an exempt institution must be made within two years of the initial approval by the Commissioner, or the Board's temporary authorization will lapse.

(iv) If the accreditor denies approval of an exempt institution, the Board's temporary authorization shall immediately expire.

(B) Board's on-site review and evaluation. If the accreditor does not conduct an on-site review and evaluation of the branch campus or extension center or the institution is non-exempt, the Board will conduct an office review and, if deemed necessary, an on-site review and evaluation to determine whether the branch complies with the Board's standards of operations.

(i) The Board may invite SACS to provide representation, to accompany the visiting team, and to supply comments.

(ii) If an on-site review is conducted, the institution shall be assessed the fee for an on-site survey to a branch campus or extension center, as provided in §7.6(c) of this title.

(iii) The institution shall be sent the report of the Board's review and evaluation and shall have 30 days to submit a written response to the report.

(iv) After examining the report of review and evaluation and the institution's written response, the Commissioner may

issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary approval of the branch campus or extension center.

(6) The Board requires reviews, including site visits, of an exempt branch campus or extension center according to the schedule used for accreditation of the main campus by the recognized accreditor. The review will be conducted in the same manner as described in paragraph (5) of this subsection. The Commissioner may deny continuing approval of any branch campus or extension site which fails to maintain the conditions and standards on which approval was based.

(7) In the event of any adverse determination made under the authority of this section by the Commissioner, the institution shall receive notice of the determination, and shall be given the reasons for the denial in writing.

(8) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(9) Any change in location, ownership, governance, administrative personnel, faculty, or facilities at the of the branch campus or extension center, or any other changes relevant to the Board's standards for off-campus operations at exempt institutions, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which approval to operate a branch campus, extension center, or other off-campus unit was granted. For purposes of this provision, administrative personnel consists only of individuals in a leadership role that involves setting institutional policies. For purposes of this provision, facilities consist only of campuses taken as a unit. Notification is only required if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported. For purposes of this provision, changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of a faculty member shall trigger notification.

(b) Standards for Off-Campus Operations at Exempt Institutions.

(1) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable laws of the state in which the institution is located, and with all Texas laws affecting its operations in Texas, including the rules and regulations adopted to administer those laws. The institution shall demonstrate that it holds a certificate of authority or is exempt from the requirement to hold a certificate of authority to grant degrees by providing documentation from an accreditor recognized by the Board demonstrating that the institution is currently accredited.

(2) Administration of the Branch Campus. There shall be an appropriate and effective administrative structure between the main campus and the off-campus unit. The character, education, and experience in higher education of the local administrators shall be such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study. Local faculty must have the same degree of separation and independence from the administration that faculty on the main campus enjoy.

(3) Financial Resources and Stability. The institution shall have a reasonable budget for the off-campus unit and must demonstrate adequate reserves available to the off-campus unit to meet its responsibilities to its Texas students.

(4) Institutional Assessment. Continual and effective assessment, planning, and evaluation of all aspects of the institution shall be conducted to advance and improve the institution. These aspects include, but are not limited to, the academic program of teaching, research, and public service; administration; financial planning and control; student services; facilities and equipment, and auxiliary enterprises.

(5) Student Admission and Remediation.

(A) Upon the admission of a student to any undergraduate program, the institution shall document the student's level of preparation to undertake college level work by obtaining proof of the student's high school graduation or General Educational Development (GED) certification and by assessing the academic skills of each entering student with an instrument approved in §4.56 of this title (relating to Assessment Instruments), and otherwise complying with §§4.51 - 4.59 of this title (relating to the Texas Success Initiative). If a GED is presented, to be valid, the score must be at or above the passing level set by the Texas Education Agency. The institution shall provide an effective program of remediation for students diagnosed with deficiencies in their preparation for collegiate study.

(B) Upon the admission of a student to any graduate program, the institution shall document that the student is prepared to undertake graduate-level work by obtaining proof that the student holds a baccalaureate degree from an institution accredited by a recognized accrediting agency, or an institution holding a certificate of authority to offer baccalaureate degrees under the provisions of this chapter, or a degree from a foreign institution equivalent to a baccalaureate degree from an accredited institution. The procedures used by the institution for establishing the equivalency of a foreign degree shall be consistent with the guidelines of the National Council on the Evaluation of Foreign Education Credentials or its successor.

(6) Faculty Qualifications. The character, education, and experience in higher education of the faculty shall be such as may reasonably ensure that the students will receive an education consistent with the objectives of the course or program of study.

(A) Each faculty member teaching in an academic associate or baccalaureate level degree program, except for technical or vocational courses, shall have at least a master's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(B) Each faculty member teaching technical or vocational courses in a vocational associate degree program, or technical and vocational courses that academic associate or baccalaureate students may chose to take, shall have at least an associate degree in the discipline being taught from an institution accredited by a recognized agency or at least three years of direct or closely related experience in the discipline being taught.

(C) Each faculty member teaching general education courses in a vocational associate degree program shall have at least a baccalaureate's degree from an institution accredited by a recognized agency with at least 18 graduate semester credit hours in the discipline, or closely related discipline, being taught.

(D) Graduate level degree programs shall be taught by faculty holding doctorates, or other degrees, generally recognized as the highest attainable in the discipline, or closely related discipline, being taught, from institutions accredited by a recognized agency.

(E) With the approval of a majority of the institution's governing board, an individual with exceptional experience in the field of appointment, which may include direct and relevant work ex-

perience, professional licensure and certification, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements, may serve as a faculty member without the degree credentials specified above. The justification for such appointment shall be fully documented. The Coordinating Board may evaluate the qualifications of the full complement of faculty providing instruction at the institution to verify that such appointments are justified.

(7) Faculty Size. There shall be a sufficient number of faculty holding teaching appointments who are accessible to the students to ensure continuity and stability of the education program, adequate educational association between students and faculty and among the faculty members, and adequate opportunity for proper preparation for instruction and professional growth by faculty members. Full time faculty on the main campus serving in merely an assessment role at the off-campus unit do not, taken alone, satisfy the standard. There shall be at least one faculty member with a teaching assignment for each program at the off-campus unit.

(8) Academic Freedom and Faculty Security. The institution shall adopt, adhere to, and distribute to all members of the faculty a statement of academic freedom assuring freedom in teaching, research, and publication. All policies and procedures concerning promotion; tenure; and non-renewal or termination of appointments, including for cause, shall be clearly published in a faculty handbook, adhered to by the institution, and supplied to all faculty. The specific terms and conditions of employment of each faculty member shall be clearly described in a written document that shall be given to that faculty member with a copy to be retained by the institution. If there are separate provisions of employment for Texas branch faculty, those differences must be explicitly stated to faculty in writing. If the differences are substantial, there should be a separate faculty handbook for the Texas faculty.

(9) Curriculum.

(A) The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Each program shall adequately cover the breadth of knowledge of the discipline taught and coursework must build on the knowledge of previous courses to increase the rigor of instruction and the learning of students in the discipline. A majority of the courses in the areas of specialization required for each degree program shall be offered in organized classes by the institution. An institution may offer for-credit coursework that does not directly relate to approved programs, provided that it does not exceed 25 percent of all courses.

(B) An academic associate degree must consist of at least 60 semester credit hours or 90 quarter credit hours and not more than 66 semester credit hours or 99 quarter credit hours. A baccalaureate degree must consist of at least 120 semester credit hours or 180 quarter credit hours and not more than 139 semester credit hours or 208 quarter credit hours. A master's degree must consist of at least 30 semester credit hours or 45 quarter credit hours and not more than 36 semester credit hours or 54 quarter credit hours of graduate level work past the baccalaureate degree.

(C) Courses designed to correct deficiencies, remedial courses for associate and baccalaureate programs, and leveling courses for graduate programs, shall not count toward requirements for completion of the degree.

(D) The degree level, degree designation, and the designation of the major course of study shall be appropriate to the curriculum offered and shall be accurately listed on the student's diploma and transcript.

(10) General Education.

(A) Each academic associate degree program shall contain a general education component consisting of at least 20 semester credit hours or 30 quarter credit hours. Each baccalaureate degree program shall contain a general education component consisting of at least 25 percent of the total hours required for graduation from the program.

(B) This component shall be drawn from each of the following areas: Humanities and Fine Arts, Social and Behavioral Sciences, and Natural Sciences and Mathematics. It shall include courses to develop skills in written and oral communication and basic computer instruction.

(C) The applicant institution may arrange to have all or part of the general education component taught by another institution, provided that:

(i) the applicant institution's faculty shall design the general education requirement;

(ii) there shall be a written agreement between the institutions specifying the applicant institutions' general education requirements and the manner in which they will be met by the providing institution;

(iii) the providing institution shall be accredited by a recognized accrediting agency.

(11) Credit for Work Completed Outside a Collegiate Setting.

(A) An institution awarding collegiate credit for work completed outside a collegiate setting (outside a degree-granting institution accredited by a recognized agency) shall establish and adhere to a systematic method for evaluating that work, shall award credit only in course content which falls within the authorized degree programs of the institution, or, if by evaluative examination, falls within the standards for awarding credit by exam used by public universities in Texas, in an appropriate manner shall relate the credit to the student's current educational goals, and shall subject the institution's process and procedures for evaluating work completed outside a collegiate setting to ongoing review and evaluation by the institution's teaching faculty. To these ends, recognized evaluative examinations such as the advanced placement program (AP) or the college level examination program (CLEP) may be used.

(B) No more than one half of the credit applied toward a student's associate or baccalaureate degree program may be based on work completed outside a collegiate setting. Those credits must be validated in the manner set forth in subparagraph (A) of this paragraph. No more than 15 semester credit hours or 23 quarter credit hours of that credit may be awarded by means other than recognized evaluative examinations. No graduate credit for work completed outside a collegiate setting may be awarded. In no instance may credit be awarded for life experience per se or merely for years of service in a position or job.

(12) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purposes and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resources development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in

each discipline in which the graduate program is offered. Vocational and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(13) Academic Records. Adequate records of each student's academic performance shall be securely and permanently maintained by the institution.

(A) The records for each student shall contain:

(i) student contact and identification information, including address and telephone number;

(ii) records of admission documents, such as high school diploma or GED (if undergraduate) or undergraduate degree (if graduate);

(iii) records of all courses attempted, including grade; completion status of the student, including the diploma, degree or award conferred to the student; and

(iv) any other information typically contained in academic records.

(B) Two copies of said records shall be maintained in secure places.

(C) Transcripts shall be provided upon request by a student, subject to the institution's obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(14) Facilities. The institution shall have adequate space, equipment, and instructional materials to provide education of good quality. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, and adequate.

(15) Accurate and Fair Representation in Publications, Advertising, and Promotion.

(A) Neither the institution nor its agents shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements.

(B) The institution shall provide students, prospective students prior to enrollment, and other interested persons with a catalog containing, at minimum, the following information:

(i) the institution's mission;

(ii) a statement of admissions policies;

(iii) information describing the purpose, length, and objectives of the program or programs offered by the institution;

(iv) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(v) cancellation and refund policies;

(vi) a definition of the unit of credit as it applies at the institution;

(vii) an explanation of satisfactory progress as it applies at the institution, including an explanation of the grading or marking system;

(viii) the institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates;

(ix) a complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(x) a complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree;

(xi) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(xii) a complete listing of all scholarships offered, if any;

(xiii) a statement describing the nature and extent of available student services;

(xiv) complete and clearly stated information about the transferability of credit to other postsecondary institutions including two-year and four-year colleges and universities;

(xv) a statement of Texas Success Initiative requirements;

(xvi) any such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein; and

(xvii) any disclosures specified by the Board or defined in Board rules.

(C) The cancellation and refund policy of the institution shall be fair and shall be applied equitably.

(D) The institution shall provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and job placement rate by program.

(E) Any special requirements, or limitations of program offerings, for the students at the Texas branch must be made explicit in writing or through electronic publication. This may be accomplished by either a separate section in the catalog or a brochure or other printed or electronic document separate from the catalog. However, it a brochure or separated document is produced, the student must also be given the regular catalog.

(F) Upon satisfactory completion of the program of study, the student shall be given appropriate educational credentials indicating the degree level, degree designation, and the designation of the major course of study, and a transcript accurately listing the information typically found on such a document, subject to institutions' obligation, if any, to cooperate with the rules and regulations governing state, and federally guaranteed student loans.

(16) Academic Advising and Counseling. The institution shall provide an effective program of academic advising for all students enrolled. The program shall include orientation to the academic program, academic counseling, career information and planning, placement assistance, and testing services.

(17) Student Rights and Responsibilities. The institution shall establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which shall include other rights and responsibilities of the students. This handbook shall be supplied to each student upon enrollment in the institution.

(18) Health and Safety. The institution shall provide an effective program of health and safety education reflecting the needs of

the students. The program shall include information on emergency and safety procedures at the institution, including appropriate responses to illness, accident, fire, and crime.

§7.11. Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

(a) Occasional Courses. A private institution may offer occasional degree-credit courses at off-campus sites in Texas without prior approval of the Board. Nonexempt private institutions must submit an annual report to the Board listing any new such courses added that year.

(b) Changes of Level for Exempt Private Institutions. An institution which is exempt by accreditation from a recognized agency and which has established stability by being so accredited for the previous ten years and which wishes to expand to a different degree level not covered by its existing accreditation shall, by submission of a letter to the Commissioner outlining the degree or degrees to be offered at the higher level, be granted state authorization to seek accreditation at the higher level with the recognized accrediting agency. If the recognized accrediting agency does not extend accreditation to the higher level or if the institution has not been accredited for ten or more years, the institution may seek a certificate of authority under the procedures listed in §7.7 of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments).

(c) Out-of-State Public Institutions of Higher Education. An out-of-state public institution of higher education as defined in §7.3 of this title (relating to Definitions) must have approval of the Board to offer a course or a grouping of courses within the State of Texas (Texas Education Code, Chapter 61, Subchapter H). The institution must submit a description of its plans prior to offering courses, including information requested on an application form furnished by the Board. The application will be subject to review under the procedures listed in §7.7 of this title.

§7.12. Revocation of Certificates of Nonexempt Institutions and Agents.

(a) The Commissioner may revoke an institution's certificate of authority, including an alternative certificate of authority, to grant degrees at any time if the Commissioner finds that:

(1) Any statement contained in an application for the certificate is untrue;

(2) The institution has failed to maintain the standards of the Board, as described herein, on the basis of which the certificate was granted;

(3) Advertising or representations made on behalf of the institution is deceptive or misleading; or

(4) The institution has violated any provision of this subchapter.

(b) The Commissioner may revoke an agent's certificate of registration at any time if the Commissioner finds that:

(1) Any statement contained in the application is untrue;

(2) The institution represented has had its certificate of authority revoked;

(3) The agent has made false, deceptive, or misleading statements while attempting to solicit residents of this state as students; or

(4) The agent has violated any provision of this subchapter.

(c) Notice of revocation under subsections (a) and (b) of this section shall be provided to the certificate holder and shall contain information regarding the reasons for the revocation.

(d) Notice of revocation under subsection (b)(1), (3), or (4) of this section shall also be given to the institution that the agent represented or purported to represent. Immediately upon receipt of actual knowledge of the agent's violation, or upon receipt of the Commissioner's notice, whichever is earlier, the institution shall make every effort to:

(1) divest the agent of the authority and of the apparent authority to represent the institution;

(2) notify the media through which the agent made the misrepresentations of the actual facts; and

(3) notify all students whose decision to enroll in the institution was affected by the agent's misrepresentation, of the actual facts.

(e) A revocation made pursuant to this section shall become final and binding unless, within 45 days of its receipt of the notice of revocation, the institution or agent invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.13. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

(a) A person holding a degree from an institution that is not eligible to receive a certificate of authority may request a letter from the Board confirming that the institution is not eligible for a certificate of authority and providing the procedures for review and approval of the degree for use in Texas. The Board shall send a copy of the letter to the institution.

(b) Procedures for review and approval.

(1) An institution that confers a degree described in §7.3(14)(B) or (C) of this title (relating to Definitions), may request that the Board review and approve for use in Texas that degree, as provided in those sections. The person or institution shall submit the request on a form created by the Board.

(2) The Commissioner shall apply the standards provided in §7.8 of this title (relating to Standards for Certificates of Authority) to determine if the degrees awarded by a person or institution are equivalent to degrees granted by a private postsecondary educational institution or other person holding a certificate of authority from the Board.

(3) The Commissioner, or the Commissioner's designated representatives, and an ad hoc team of independent consultants, if the Commissioner finds that such a team would provide a benefit to the Board or to the institution, shall visit the institution and conduct an on-site survey to evaluate the application for review and approval. The visiting team shall be composed of people who have experience on the faculties or staffs of accredited institutions and who possess knowledge of accreditation standards.

(4) The Board shall charge the person or institution petitioning for review and approval a fee equal to the application fee for a certificate of authority or the actual cost of conducting the review, including travel expenses and cost of consultant fees, whichever is greater.

§7.14. Information Provided to Protect Public from Fraudulent, Substandard, or Fictitious Degrees.

(a) The Board shall disseminate the following information through the Board's Internet website:

(1) the accreditation status or the status regarding authorization or approval under this subchapter, to the extent known by the Board, of each exempt institution operating in the state, each postsecondary educational institution or other person that is regulated under

§§7.1 - 7.11 of this title or for which a determination is made under §7.11(a) of this title (relating to Occasional Courses, Changes of Level at Exempt Institutions, and Out-of-State Public Institutions), and any institution offering fraudulent or substandard degrees, including:

(A) the name of each educational institution accredited, authorized, or approved to offer or grant degrees in this state;

(B) the name of each educational institution whose degrees the Board has determined may not be legally used in this state; and

(C) the name of each educational institution that the Board has determined to be operating in this state in violation of this subchapter; and

(2) any other information considered by the Commissioner to be useful to protect the public from fraudulent, substandard, or fictitious degrees.

(b) the Board shall utilize such usual and customary sources for determining the accreditation status of institutions; guides to international education; the Board's knowledge of legal actions taken against institutions, either by an agency of the state of Texas or agencies of other states or nations; or civil actions against institutions brought by governmental agencies or individuals.

(c) In determining the legitimacy of institutions headquartered or operating outside of Texas, the Board may determine if the state or nation in which the person or institution is headquartered, operates, or holds legal authorization to operate has standards and practices that are as rigorous as those of the Board's. A determination that a particular state or nation's standards or practices are not appropriately rigorous shall be sufficient reason to disapprove the use of the degrees of a person or institution.

§7.15. Prohibitions.

(a) A person or institution may not:

(1) Grant, award, or offer to award a degree on behalf of a nonexempt institution unless the institution has been issued a certificate of authority, including an alternative certificate of authority, to grant the degree by the Board;

(2) Represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified under §7.7 of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments) or §7.23 (relating to Alternative Certificate of Authority--Eligibility, Applications, and Renewals), and approved by the Board, or represent that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term;

(3) Award or offer to award an honorary degree on behalf of a private postsecondary educational institution subject to the provisions of the subchapter, unless the institution has been awarded a certificate of authority to award such a degree, or solicits another person to seek or accept an honorary degree and, further, unless the degree shall plainly state on its face that it is honorary;

(4) Use a protected term in the official name or title of a nonexempt private postsecondary educational institution or describe an institution using any of these terms or a term having a similar meaning, except as authorized by the Board, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(5) Use a protected term in the official name or title of an educational or training establishment or describe an institution using any of these terms or a term having a similar meaning, or solicit another person to seek a degree or to earn a credit that is offered by an institution or establishment that is using a term in violation of this section;

(6) Act as an agent who solicits students for enrollment in a private postsecondary educational institution subject to the provisions of the subchapter without a certificate of registration, if required by this title.

(7) Use or claim to hold a degree that the person knows is a fraudulent or substandard degree or is a fictitious degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, a compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

(b) Institutions Located on Federal Land in Texas. An institution that is operating on land in Texas over which the federal government has exclusive jurisdiction shall limit the recruitment of students and advertising of the institution or its programs or courses to the confines of the federal land and to the military or civilian employees and their dependents who work or live on that land. The institution shall not enlist any agent, representative, or institution to recruit or to advertise by any medium, the institution or its programs or courses except on the federal land.

(c) A violation of this subsection may constitute a violation of the Texas Penal Code, §32.52. An offense under subsection (a)(1) - (6) of this section may be a Class A misdemeanor and an offense under subsection (a)(7) of this section may be a Class B misdemeanor.

§7.16. Duties upon Dissolution of an Institution.

(a) In the event any institution now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of said institution shall cause to be filed with the Board the original or legible true copies of all such academic records of said institution as may be specified by the Commissioner. Such records shall include, without limitation:

(1) such academic information as is customarily required by colleges when considering students for transfer or advanced study; and

(2) the academic records of each former student.

(b) In the event it appears to the Commissioner that any records of an institution that is discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Board, the Commissioner may seek, on the Board's behalf, court authority to take possession of such records.

(c) The Board shall maintain or cause to be maintained a permanent file of such records coming into its possession.

§7.17. Procedures Related to the Assessment of Administrative Penalties.

(a) If a person or institution violates a provision of this subchapter, the Commissioner may assess an administrative penalty against the person or institution as provided in this section.

(b) The Commissioner shall send written notice by certified mail to the person or institution charged with the violation. The notice shall state the facts on which the penalty is based, the amount of the penalty assessed, and the right of the person or institution to request a hearing.

(c) The Commissioner's assessment shall become final and binding unless, within 45 days of receipt of the notice of assessment, the person or institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(d) If the person or institution does not pay the amount of the penalty within 30 days of the date on which the assessment becomes final, the Commissioner may refer the matter to the attorney general for collection of the penalty, plus court costs and attorney fees.

§7.18. Administrative Penalties.

(a) Any person or institution that is neither exempt nor the holder of a certificate of authority, including an alternative certificate of authority, to grant degrees, shall be assessed an administrative penalty of not less than $1,000 or more than $5,000 for, either individually or through an agent or representative:

(1) conferring or offering to confer a degree;

(2) awarding or offering to award credits purported to be applicable toward a degree to be awarded by another person or institution (except under conditions and in a manner specified and approved by the Board);

(3) representing that any credits offered are collegiate in nature subject to the provisions of this subchapter;

(4) Each degree conferred without authority, and each person enrolled in a course or courses at the institution whose decision to enroll was influenced by the misrepresentations, constitutes a separate offense.

(b) Any person or institution that violates §7.15(a)(4) or (5) of this title (relating to Prohibitions) shall be assessed an administrative penalty of not less than $1,000 or more than $3,000.

(c) Any agent who solicits students for enrollment in an institution subject to the provisions of the subchapter without a certificate of registration shall be assessed an administrative penalty of not less than $500 or more than $1,000. Each student solicited without authority constitutes a separate offense.

(d) Any operations which are found to be in violation of the law shall be terminated.

§7.19. Injunctions.

(a) The Commissioner may report possible violations of this subchapter to the attorney general. The attorney general, after investigation and consultation with the Board, shall bring suit to enjoin further violations.

(b) An action for an injunction under this section shall be brought in a district court in Travis County.

§7.20. Civil Penalties.

(a) A person who violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty in addition to any injunctive relief or any other remedy allowed by law. A civil penalty may not exceed $1,000 a day for each violation.

(b) The attorney general, at the request of the Board, shall bring a civil action to collect a civil penalty under this section.

§7.21. Deceptive Trade Practices Act.

(a) A person who violates this subchapter commits a false, misleading, or deceptive act or practice within the meaning of the Texas Business and Commerce Code, §17.46.

(b) A public or private right or remedy under the Texas Business and Commerce Code, Chapter 17, may be used to enforce this section.

§7.22. Alternative Certification of Authority.

In lieu of the standard certification of authority requirements for institutions and their agents in §§7.8, 7.9, and 7.11 of this title, an institution may obtain an alternative certification of authority to issue degrees as provided by this section.

(1) Surety Instrument Requirement:

(A) At the time application is made for an alternative certificate of authority, or when new programs, stand-alone courses or continuing education courses are added, the applicant shall file with the Board a surety bond or surety alternative which meets the requirements set forth in these sections. Schools located in Texas each shall file one bond or surety alternative covering the school and its agents.

(B) A school whose surety value is found by the Board to be insufficient to fund the unearned, prepaid tuition of enrolled students shall be noncompliant with these sections, and, if, after a period of time determined by the Board from the issuance of a notice of noncompliance, the school has not increased its surety to an acceptable level, it shall be subject to revocation or suspension of its alternative certificate of authority.

(C) The amount of the bond or other allowable surety instrument submitted to the Board with an application for a alternative certificate of authority shall be equal to or greater than the cost of providing a refund, including administrative costs associated with processing claims, for the maximum prepaid, unearned tuition and fees of the school, not including the Title IV portion of tuition and fees, for a period or term during the applicable school year for which programs of instruction are offered including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's year consists of one or more such periods or terms.

(D) Following the initial filing of the surety bond with the Board, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than five thousand dollars.

(E) The institution shall include a proposal in the form of a letter signed by an authorized representative of the school showing in detail the calculations made pursuant to this section and explaining the method used for computing the amount of the bond or alternative.

(F) In order to be approved by the Board, a surety bond must be:

(i) Executed by the applicant and by a surety company authorized to do business in Texas; and

(ii) In a form acceptable to the Board; and

(iii) Conditioned to provide indemnification to any student or enrollee of an in-state or out-of-state school or his/her parent or guardian determined by the Board to have suffered a loss of tuition or any fees as a result of violation of any minimum standard or as a result

of a holder of a Alternative Certificate of Authority ceasing operation; and

(iv) An original bond.

(G) In lieu of a surety bond, an applicant may file with the Board an assignment of savings account that:

(i) Is in a form acceptable to the Board; and

(ii) Is executed by the applicant; and

(iii) Is executed by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation.

(H) In lieu of a surety bond, an applicant may file with the Board a certificate of deposit that:

(i) Is issued by a state or federal savings and loan association, state bank or national bank whose accounts are insured by a federal depositor's corporation;

(ii) Is either:

(I) Payable to the Board; or

(II) In the case of a negotiable certificate of deposit, is properly assigned without restriction to the Board; or

(III) In the case of a nonnegotiable certificate of deposit, is assigned to the Board by assignment in a form satisfactory to the Board.

(I) In lieu of a surety bond, an applicant may file with the Board an irrevocable letter of credit that:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation.

(J) In lieu of a surety bond, an applicant may file with the Board a properly executed participation contract with a private association, partnership, corporation or other entity whose membership is comprised of higher education institutions, which:

(i) Is in a form acceptable to the Board; and

(ii) Conditioned to provide indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of a holder of an alternative certificate of authority ceasing operation, and provides evidence satisfactory to the Board of its financial ability to provide such indemnification and lists the amount of surety liability the alternative entity will assume.

(K) Whenever these sections require a document to be executed by an applicant the following shall prevail:

(i) If the application is a corporation, the document must be executed by the president of the corporation or persons designated by the corporate Board.

(ii) If the applicant is a limited liability corporation the document must be executed by the members.

(iii) If the applicant is a partnership, the document must be executed by all general partners.

(iv) If the applicant is an individual, the document must be signed by the individual.

(v) If the applicant is a state agency, the document must be signed by the Director of that Department.

(vi) If the applicant is a local government, the document must be signed by the mayor or Board president.

(L) Any bonding alternative entity must have independent financial resources necessary to meet the contractual obligation to the students of a failed member institution and resources equal to or exceeding the maximum bonds required of all single school.

(M) A school applying for an alternative certificate of authority shall be exempt from the surety instrument requirement if it can demonstrate a United States Department of Education composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years.

(2) Self-certification Application and Statement. An institution seeking an alternative certificate of authority shall submit to the Board a completed application and a completed checklist, signed and dated, acknowledging compliance with certification criteria set forth in this section, along with a notarized attestation statement signed by the chief executive officer or equivalent. The application form shall contain:

(A) The name and address of the institution and its purpose;

(B) The names of the sponsors or owners of the institution;

(C) The regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution;

(D) The names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board;

(E) The names of faculty who have been retained, their area(s) of teaching, and their degrees held;

(F) The types of degrees to be awarded and a list of courses that may be included in each degree program; and

(G) The location of any facilities maintained or being constructed and a list of potentially hazardous equipment which requires a federal or state government license to operate, if any has been acquired, that is to be used by students in the teaching process. The institution must certify that it maintains the following items and that they are readily accessible to students and the public, including on the institution's internet website, although they need not be submitted to the Board unless specifically required herein or requested by the Board:

(i) Institutional Description. The postsecondary institution shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

(I) The history and development of the postsecondary institution;

(II) An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary institution;

(III) The purpose of the postsecondary institution, including a statement of the relative degree of emphasis on instruction, research, and public service as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;

(IV) A list of the principal locations in Texas at which the postsecondary institution offers courses and a list of the degree programs currently offered or planned to be offered by the institution and/or a description of the postsecondary institution's online, distance and telecommunications activities; and

(V) Name of program director or director of education credentials;

(VI) The name, location, and address of the main campus, branch or site operating in Texas.

(ii) Student Profile. The postsecondary institution shall have a clear, accurate, and comprehensive written description of its student body profile. This description must be updated at least annually and made available to the public upon request. The description minimally shall include the following items:

(I) For each Texas location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students claiming Texas residence who were enrolled in each program offered;

(II) For each Texas location, the total number of students that completed/graduated from each program offered by the institution as of the end of the last academic year; and

(III) Demographic information on the composition of the student body.

(iii) Recruitment, Admissions, Courses, Student Complaints. The postsecondary institution shall have, maintain, and provide to all applicants a policy document, catalog, bulletin, brochure, or electronic media accurately defining the minimum requirements for eligibility for admission to the institution and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary institution that are relevant to the institution's admissions standards. In addition, the document shall include:

(I) A broad description, including academic career-technical objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course, credential degree completion, course descriptions, and a statement of the type of credential awarded;

(II) The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates/diplomas;

(III) The academic or course work schedule for the period covered by the publication;

(IV) The criteria for transfer credit where applicable;

(V) A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible;

(VI) The description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation;

(VII) The institution's refund policy for tuition and fees. The institution shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of nonrefundable application fees remitted to the school by a prospective student shall be if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws prior to the start of the program, or is dismissed prior to the start of the program. The institution must have a written policy regarding the refund of tuition and fees after the start of the program, including the length of time in which refunds will be completed.

(VIII) A statement that accurately details the type and amount of career advising and placement services offered by the school;

(IX) Student retention, persistence, graduation, transfer, and time-to-degree or program completion rates;

(X) Students' rights, privileges, and responsibilities; and, the established grievance process of the institution, which shall indicate that students should follow this process and may contact the Board and/or Attorney General to file a complaint about the institution if necessary; and

(XI) Where students may find on the institution's website the results of student satisfaction surveys by course and instructor, student comments on the satisfaction surveys, and grade distributions by course and program; and whether this information is externally-validated and the name of address of the validating entity.

(XII) Where students may find on the institution's website outcome data such as graduation rate, post-graduate employment data, post-graduate scores on regulatory, licensure or other external exams, and results from post-graduate employer satisfaction and/or employer satisfaction surveys; and whether this information is externally-validated and the name of address of the validating entity.

(iv) Student Records. The postsecondary institution shall maintain records on all enrolled students. At a minimum, these records shall include:

(I) Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that are relevant to the postsecondary institution's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary institution. Admissions records must be maintained for a minimum of three years after the student's last date of attendance.

(II) A transcript of the student's academic or course work at the institution, which shall be retained permanently in either hard copy forms or in an electronic database with backup.

(III) A record of student academic or course progress at the institution including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current academic status.

(IV) A record of all financial transactions between each individual student and the institution including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance.

(V) A written, binding agreement transacted with another institution or records-maintenance organization with which the school is not corporately connected for the preservation of students' transcripts by another institution or agency, as well as for access to the transcripts, in the event of school closure or revocation of certification in Texas.

(v) Curriculum, Total Credits, General Education, Satisfactory Progress, Institutional Effectiveness and Systematic Program of Review. The institution must have a clearly defined process by which the curriculum is established, reviewed and evaluated. Each evaluation of institutional or program effectiveness must be completed on a regular basis and must include, but not be limited to:

(I) An explanation of how each program is consistent with the mission of the institution;

(II) The number of hours of instruction in each subject and total number of hours required for course, credential and/or degree completion, course descriptions, and a statement of the type of credential awarded;

(III) The amount and type of general education required in a degree program;

(IV) A detailed and clear explanation of the student outcomes expected by each program, including the skills, tools, knowledge and competencies students are expected to learn;

(V) An explanation for what constitutes satisfactory progress by students in each program;

(VI) A process for evaluating the effectiveness of each program in achieving the desired outcomes, including the use, where applicable, of student outcome data such as graduation rate, post-graduate employment data, post-graduate scores on regulatory, licensure or other external exams, results from post-graduate and/or employer satisfaction surveys;

(VII) The externally-validated, competency-based method that is reliable and comparable with other institutions or programs of the same type that is used to measure student outcomes for each program offered by the institution;

(VIII) The name and address of the entity or entities conducting the external review of each program;

(IX) That the institution maintains and makes readily available to all applicants, all enrolled students and the public the results of all external reviews of each program; and

(X) Documented use of the results of these reviews to improve the programs offered by the institution

(vi) Faculty Qualifications. The postsecondary institution shall have a clear, accurate, and comprehensive written statement regarding the qualifications of the institution's administrators and faculty, which shall be available to the public upon request. The statement minimally shall include the following items:

(I) The names of all administrators and faculty and their qualifications, including technical and general education faculty;

(II) The specific courses taught by each administrator and faculty member;

(III) The total number of students taught by each faculty member in the previous academic year or term;

(IV) The policy and procedures by which administrators and faculty receive performance reviews and are compensated, including whether the institution uses student evaluations of faculty; and

(V) The results from student satisfaction surveys of each faculty member.

(vii) Management and Financial Capacity and Information Sharing. The institution must maintain records that demonstrate it is financially sound; exercises proper management, financial controls and business practices; and can fulfill its commitments for education or training. The institution's financial resources should be characterized by stability, which indicates the institution is capable of maintaining operational continuity for an extended period of time.

(I) Institutions shall make publicly available the results of an annual independently audited, reviewed or compiled financial statement.

(II) In reviewing these results, the Board shall use the United States Department of Education Financial Ratio (composite score). The United States Department of Education composite score range is 1.0 to 3.0. Institutions with a score of 1.5 to 3.0 meet fully the stability requirement; scores between 1.0 and 1.4 meet the minimum expectations; and scores less than 1.0 do not meet the requirement and shall be immediately considered for audit by the Board.

(III) The institution shall have a written policy on the sharing of information with state and federal regulatory agencies.

(viii) Learning Resources. The institution shall maintain and ensure that students have access to learning resources with a collection, staff, services, equipment and facilities that are adequate and appropriate for the purpose and enrollment of the institution. Learning resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The institution shall maintain a continuous plan for learning resource development and support, including objectives and selections of materials. Current and formal written agreements with other institutions or with other entities may be used. Institutions offering graduate work shall provide access to learning resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Vocational and technical degree programs shall provide adequate and appropriate resources for completion of course work.

(ix) Agents. Institutions shall certify that they maintain a list of their agents as defined in §7.3 of this title (relating to Definitions) and have policies to ensure that their agents are of good character and provide accurate information to prospective students and their families, but such agents are not required to register with the Board or submit a fee.

(x) Continuity. Institutions shall certify either that they have operational continuity of two years or more by indicating that either at least one of their core institutional academic components, such as their chief academic officer or a founding faculty member, has delivered or overseen the delivery of higher education services within or outside of Texas for at least the last two years; or

(xi) Off-Campus Courses and Branch Campuses. An institution holding an alternative certificate of authority may operate branch campuses and offer degree-credit courses at off-campus sites without prior approval of the Board, provided the requirements of this section are met.

(3) That the applicant institution incorporated two or more years ago jurisdiction whether in Texas or another jurisdiction.

§7.23. Alternative Certificate of Authority--Eligibility, Applications, and Renewals.

This section shall apply to institutions holding or seeking an alternative certification of authority in lieu of §7.7 of this title (relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments).

(1) Eligibility to apply. The Board will accept applications for an alternative certificate of authority only from those institutions proposing to offer a degree or credit courses alleged to be applicable to a degree.

(2) Application for alternative certificate of authority.

(A) Institutions seeking an alternative certificate of authority are urged to contact the Board's Institutional Certification before filing a formal application.

(B) Applications must be submitted with an original and four copies and accompanied by the fee described in §7.24(2) of this title (relating to Administrative Procedures Related to Alternative Certification of Nonexempt Institutions).

(3) Renewal of certificate of authority.

(A) At least 180 days, but no more than 210 days, prior to the expiration of the current alternative certificate of authority, an institution, if it desires renewal, shall make application to the Board on forms provided upon request. Reports not previously submitted to the Board, related to the application for or renewal of accreditation by national or regional accrediting agencies shall be included. The renewal application shall be accompanied by the fee described in §7.24(2) of this title.

(B) The application for renewal of the alternative certificate of authority will be evaluated in the same manner as that prescribed for evaluation of an initial application.

(4) An institution may be granted consecutive alternative certificates of authority for no longer than 12 years. Absent sufficient cause, at the end of 12 years, the institution must be accredited by a recognized accrediting agency. A institution that provides information to the Board indicating that it has enhanced the educational and workforce preparation levels of its students and submits a notarized letter stating that accreditation requirements would increase costs, limit innovation, or otherwise impose hardship shall be deemed to have shown sufficient cause and the Board shall renew its certification without further limitation.

(5) The Board shall renew the alternative certificate of authority if it finds that the institution has maintained all requisite standards and is making progress toward accreditation.

(6) The Board shall consider applications for alternative certificates of authority without regard to the religious affiliation, if any, of the applicant.

(7) Authority to represent transferability of course credit. Any institution as defined in §7.3 of this title (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(A) the other institution is named in such representation, and is accredited by an accrediting agency listed in §7.5(a)(1) of this title (relating to Recognized Accrediting Agencies, Exemptions, Revocation of Exemptions, and Certificates of Authorization) or holds a certificate of authority or alternative certificate of authority;

(B) the courses are identified for which credit is claimed to be applicable to the degree programs at the other institution; and

(C) the written agreement between the institution subject to these rules and the other institution is approved by both institutions' governing boards in writing and by their accrediting agencies, if any, and is filed with the Board.

(8) If an order, decision, or determination made pursuant to this section is adverse to an institution, the reasons therefore shall be detailed in a notice to the institution. The order, decision, or determination shall become final and binding unless, within 45 days of its receipt of the adverse order, decision, or determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

§7.24. Administrative Procedures Relating to Alternative Certification of Nonexempt Institutions.

This section shall apply to institutions holding or seeking an alternative certification of authority in lieu of §7.6 of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(1) The Board shall issue to a nonexempt institution an alternative certificate of authority to grant degrees and enroll students for courses which may be applicable toward a degree if the Board finds that the institution meets the standards established heretofore and has submitted a valid surety instrument, completed application, self-certification checklist, and notarized attestation statement as described in §7.21 of this title (relating to Deceptive Trade Practices Act) unless the Board has found by a preponderance of the evidence that there is one or more material false statements in these submissions. The Board shall make this determination within 90 days.

(2) Fees.

(A) Alternative Certificates of Authority. Each biennium the Commissioner shall set the fee for initial and renewal applications for alternative certificates of authority, which shall be equal to the average cost of evaluating the applications. If the Board conducts a site visit at a main campus or a branch campus, the Board may also charge the institution with the costs of travel, meals, and lodging of the visiting team and the Commissioner, or the Commissioner's designated representatives, and consulting fees for the visiting team members.

(B) The Commissioner shall report changes in the fees to the Board at a quarterly meeting.

(3) Board's review of applications.

(A) Upon approval of the Board to award an alternative certificate of authority to an institution, the Commissioner will act immediately to prepare and forward the certificate. It shall state at minimum the issue date and the period for which the certificate is valid.

(B) If the Board denies an institution's application for an alternative certificate of authority, or for renewal of its alternative certificate of authority, the Commissioner shall notify the institution in writing of the denial and of the reasons for the denial.

(C) If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of its receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

(D) Terms and limitations of an alternative certificate of authority.

(E) The alternative certificate of authority to grant degrees is valid for a period of two years from the date of issuance.

(F) An institution awarded an alternative certificate of authority shall not use terms to interpret the significance of the certificate which specify, imply, or connote greater approval than simple per-

mission to operate and grant degrees in Texas. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended" by the State of Texas or agency thereof. Specific language prescribed by the Commissioner which explains the significance of the alternative certificate of authority shall be included in all publications, advertisements, and other documents where certification and the accreditation status of the institution are mentioned.

(4) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for alternative certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which the certificate was granted. An institution may choose to comply with this provision by posting a notice of the change on its and, by fax, letter, phone, or email, notifying the Board that such notice has been so posted. For purposes of this provision:

(A) a change in administrative personnel that must be reported occurs only of an individual in a executive leadership role that involves setting institutional policies vacates that position;

(B) a change in facilities that must be reported occurs only if an entire campus is closed. Changes in individual rooms and buildings, such as remodeling, need not be reported

(C) changes in the status of an individual faculty member, such as hours worked, courses taught, and responsibilities within a department, need not be reported. Only the addition or subtraction of faculty collectively in an area (an academic or vocational department) shall be reported.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 11, 2007.

TRD-200706310
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 24, 2008
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

19 TAC §101.3005

The Texas Education Agency (TEA) proposes an amendment to §101.3005, concerning implementation of testing program. The amended section addresses required test administration procedures and training activities to ensure validity, reliability, and security of assessments. The proposed amendment would incorporate records retention requirements related to the security of assessment instruments, in accordance with Senate Bill (SB) 1031, 80th Texas Legislature, 2007.

SB 1031, 80th Texas Legislature, 2007, amended the TEC, Chapter 39, Subchapter B, incorporating additional statutes relating to public school accountability and the administration of certain assessment instruments in public schools. The TEC, §39.0301, added by SB 1031, authorizes the commissioner to establish record retention requirements for school district records related to the security of assessment instruments.

The proposed amendment to 19 TAC §101.3005 would implement the legislative requirement by incorporating reference to security in subsection (a) and adding new subsection (d) to specify in rule the retention requirement of five years for school districts to maintain records related to the security of assessment instruments. A non-substantive change would also be made in subsection (b)(2).

Criss Cloudt, associate commissioner for assessment, accountability, and data quality, has determined that, for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendment. There will be fiscal implications for local government. Some school districts may incur additional costs for the storing of records related to the security of assessment instruments; however, some school districts may already have the capacity to store records for five years as proposed. It is not possible to reasonably estimate what the cost would be since local school district needs for storing records would vary.

Dr. Cloudt has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be the provision of additional methods and means of ensuring the security and validity of assessment instruments covered under the TEC, §39.023. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

The public comment period on the proposal begins December 21, 2007, and ends January 20, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §39.0301(a)(2), as added by SB 1031, 80th Texas Legislature, 2007, which authorizes the commissioner to establish record retention requirements for school district records related to the security of assessment instruments.

The new section implements the Texas Education Code, §39.0301(a)(2).

§101.3005. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, as required by the Texas Education Code (TEC), §39.023(i), the commissioner of education shall establish test administration procedures and required training activities that support the standardization and security of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

(1) general testing program information;

(2) requirements for ensuring test security and confidentiality [~~confidential integrity~~] ;

(3) procedures for test administration;

(4) responsibilities of various personnel involved in test administration; and

(5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

(d) Records retention. As part of test administration procedures, the commissioner shall require school districts to maintain records related to the security of assessment instruments for a minimum of five years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706244
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.7

The Texas State Board of Dental Examiners (Board) proposes the amendment of §103.7, regarding the reinstatement of a retired Texas dental hygiene license. The amendment is proposed to update the requirement that a retired hygienist who has not actively practiced for at least two years complete twenty-four, rather than twelve, hours of continuing education in the year preceding the application of the Texas license holder for reinstatement. This is already the standard for retired dentists.

Sherri Sanders Meek, Executive Director of the Texas State Board of Dental Examiners, has determined that, for each year of the first five-year period the amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The administration and enforcement of the proposed section is expected to benefit the public by ensuring that retired hygienists returning to active practice have received the appropriate level of training and continuing education to meet the current standard of care in the practice of dental hygiene.

There is no impact on large, small, or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the amended section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The section is proposed under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101-125.

§103.7. Retired License Status.

(a) (No change.)

(b) Reinstatement. The board may reinstate a retired Texas dental hygiene license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) (No change.)

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

(A) - (C) (No change.)

(D) proof of completion of twenty-four [~~twelve~~] hours of continuing education, pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application, of which a minimum of twelve hours must be clinical (hands-on).

(3) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2007.

TRD-200706104

Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-0972

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CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER A. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §107.63

The Texas State Board of Dental Examiners (Board) proposes amendment to §107.63. The amendment eliminates the basis for complainant appeals.

Ms. Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners has determined that, for each year of the first five-year period this amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this amended section will be negligible.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this amended section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this section is published in the *Texas Register*.

This section is proposed under Texas Government Code, §2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

§107.63. Informal Disposition and Alternative Dispute Resolution.

(a) - (b) (No change.)

(c) Informal Disposition. Pursuant to the Government Code, Chapter 2001 et. seq., ultimate disposition of any complaint or matter pending before the Board may be made by stipulation, agreed settlement, or consent order. Under the Occupations Code, §263.007 and §263.0075, such a disposition may be reached through review at an informal settlement conference, which may take the form of a staff settlement conference or a Board settlement conference.

(1) (No change.)

(2) Staff Settlement Conference.

(A) - (F) (No change.)

~~[(G) A complainant may appeal the decision to close a case by the staff in accordance with Rule 107.102(h).]~~

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2007.

TRD-200706105
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-0972

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SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.103

The Texas State Board of Dental Examiners (Board) proposes amendment to §107.103. The amendment eliminates the basis for complainant appeals.

Ms. Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners has determined that, for each year of the first five-year period this amended section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

The public benefit anticipated as a result of enforcing or administering this amended section will be negligible.

There is no anticipated impact on large, small, or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this amended section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

This section is proposed under Texas Government Code, §2001.021 et seq., Texas Civil Statutes; the Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

§107.103. Dismissal of Complaints.

~~[(a) Dismissal.]~~

(a) ~~[(1)]~~ The director of enforcement may recommend dismissal of a complaint if an investigation fails to reveal a violation.

(b) ~~[(2)]~~ If the director of enforcement recommends dismissal of a complaint, he or she shall state, with specificity, the reason or reasons for the recommended dismissal.

(c) [~~(3)~~] A complaint recommended for dismissal by the director of enforcement shall be reviewed by a member of the enforcement committee. For complaints involving patient morbidity, professional conduct, or minimum standard of care, the reviewer must be a dentist member of the committee.

(d) [~~(4)~~] If the committee member does not recommend dismissal, the complaint shall be forwarded to an informal settlement conference. If the committee member agrees that the complaint should be dismissed, then the dismissal shall be final.

(e) [~~(5)~~] All jurisdictional complaints shall be investigated. No complaint shall be dismissed without appropriate consideration.

(f) [~~(6)~~] If a complaint is dismissed, the SBDE shall notify the complainant within ten days of the date of the dismissal. The notice of dismissal must be in writing[~~,~~] and include the reason(s) for the dismissal. [~~and inform the complainant of the right to appeal the dismissal. An appeal under this section shall be considered a request for reconsideration of the dismissed complaint.~~]

(g) [~~(7)~~] All complaints dismissed under this section must be reported to the full board in a public meeting of the board.

~~[(b) Appeal.]~~

~~[(1) The SBDE may hear an appeal in a dismissed complaint only if new information or evidence is presented, the acceptance of such, if taken as true, supports the original complaint.]~~

~~[(2) The complainant must request reconsideration of a dismissed complaint in writing, postmarked no later than twenty days from the date of receipt of the SBDE's dismissal letter. The complainant is presumed and deemed to be in receipt of the dismissal letter on the third day after the date on which the dismissal letter is mailed.]~~

~~[(3) A request for reconsideration of a dismissed complaint shall not be considered by the SBDE unless it is timely submitted.]~~

~~[(4) A request for reconsideration must contain the requirements specified in this subsection.]~~

~~[(5) Requests meeting the requirements of this subsection shall be heard by the professional evaluation committee no later than sixty days after the date the SBDE receives the request from the complainant requesting reconsideration. This time frame may be extended upon good cause shown by the SBDE. If the professional evaluation committee meets to reconsider the complaint after this sixty-day period, the SBDE shall notify the complainant in writing.]~~

~~[(6) This subsection does not apply to complaints dismissed by the full board pursuant to a recommendation from an informal settlement conference panel.]~~

~~[(7) All complaints dismissed by the full board may be appealed in accordance with the Government Code.]~~

~~[(c) Professional evaluation committee.]~~

~~[(1) The professional evaluation committee shall consist of three board members appointed by the presiding officer of the board, one of who must be a public member.]~~

~~[(2) Complaints referred to the professional evaluation committee by the board secretary or the board secretary's designee may be dismissed, referred to an informal settlement conference or returned to the director of enforcement for further investigation. The professional evaluation committee may also propose an agreed board order imposing sanctions. All board orders proposed by the professional evaluation committee shall include a statement that the respondent should not agree to the order if he or she wants to explain any part of his or her conduct in connection with the complaint.]~~

~~[(A) Meetings of the professional evaluation committee are open meetings as defined by the Open Meetings Act;]~~

~~[(B) Only professional evaluation committee members and SBDE staff may participate in discussions concerning any complaint. The members may review and consider all information in the investigative file.]~~

~~[(C) All determinations reached by the professional evaluation committee involving reconsideration of an earlier dismissal by the SBDE are final.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2007.

TRD-200706106
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-0972

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.7

The Texas Medical Board proposes an amendment to §161.7, concerning Executive Director.

The amendment authorizes the Executive Director to delegate responsibilities and authority to other staff members.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to allow for more efficient management of the agency by allowing the Executive Director to delegate responsibilities and authority to other staff members. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by the proposal.

§161.7. Executive Director.

(a) The board shall determine the qualifications for and employ an executive director who shall be the chief executive officer of the agency.

(b) The duties of the executive director shall be to administer and enforce the applicable law, to assist in conducting meetings of the board, and to carry out other responsibilities as assigned by the board.

(c) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. As chief executive of the agency, the executive director shall be responsible for the management of all aspects of administration of the agency to include personnel, financial and other resources in support of the applicable law, rules, policies, mission and strategic plan of the agency. The executive director may delegate any responsibility or authority to an employee of the board and any grant of responsibility or authority to the executive director shall include an employee designated by the executive director.

(d) The executive director may exercise any responsibilities or authority of the secretary-treasurer of the board unless the board assigns duties or prerogatives exclusively to the secretary-treasurer.

(e) The executive director shall serve as the medical director of the agency if the executive director is a physician licensed to practice in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706182
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-7016

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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.4

The Texas Medical Board proposes an amendment to §166.4, concerning Expired Registration Permits.

The amendment interprets §156.005, Occupations Code, as providing an exclusive penalty for practicing medicine after the expiration of a permit and within one year.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify that the exclusive sanction imposed by the agency for practicing medicine within one year after expiration of a permit is the monetary penalty provided by §156.005, Occupations Code. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Texas Occupations Code Annotated, §156.005 is affected by the proposal.

§166.4. Expired Registration Permits.

(a) If a physician's registration permit has expired, the physician may register for a new permit without monetary penalty during the first 30 days following expiration. If a physician's permit has been expired for longer than 30 days, but less than 91, the physician may obtain a new permit by submitting to the board a completed permit application, the registration fee, and a $75 penalty fee.

(b) If a physician's registration permit has been expired for longer than 90 days but less than one year, the physician may obtain a new permit by submitting a completed permit application, the registration fee, and a $150 penalty fee.

(c) If a physician's registration permit has been expired for one year or longer, the physician's license is automatically canceled, unless an investigation is pending, and the physician may not obtain a new permit.

(d) In accordance with §156.008(a) of the Act, practicing [~~Practicing~~] medicine after the expiration of the 30-day grace period under subsection (a) of this section without obtaining a new registration permit for the current registration period has the same effect as, and is subject to all penalties of, practicing medicine without a license and may be subject to criminal penalties under §165.152 of the Act. However, the Board interprets §156.005 of the Act to provide the exclusive sanction that may be imposed by the board for practicing medicine after the 30-day grace period and within one year after expiration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706183
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-7016

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CHAPTER 167. REINSTATEMENT AND REISSUANCE

The Texas Medical Board proposes amendments to §§167.1, 167.3, 167.8 and the repeal and replacement of §167.4 and §167.5, concerning Reinstatement and Reissuance.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 167.

In addition to nonsubstantive changes, the proposed changes to Chapter 167 amend the process for the application for the request for reissuance of a revoked license and add the requirement that a physician who wishes to have an active medical license after his license has been revoked or suspended must also demonstrate that his service would benefit the citizens of Texas.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that, for the first five-year period the amended sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that, for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be updated references and citations. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

22 TAC §§167.1, 167.3, 167.8

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §§153.001,164.151, and 164.152, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles, or codes are affected by the proposal.

§167.1. Reinstatement or Reissuance of Medical License Following Suspension or Revocation.

(a) Reinstatement of Medical License Following Suspension.

(1) A physician [~~An applicant~~] whose license has been suspended by order of the board must submit a written request to the board's compliance division and appear at a probationer show compliance proceeding as described in §187.44 of this title (relating to Probationer Show Compliance Proceedings) and in paragraph (2) of this subsection to request reinstatement of licensure.

(2) A person may not apply for reinstatement of a license that was suspended before the first anniversary of the date on which the suspension became effective.

(3) A request for reinstatement following suspension cannot be considered more often than annually unless otherwise specified by order of the board.

(4) A physician's [~~An applicant's~~] request for reinstatement must include evidence that all stipulations for the probation of the suspension have been completed.

(5) A physician who allows his or her license to be cancelled for nonpayment while under a suspension order may apply for relicensure in accordance with §163.10 of this title (relating to Relicensure).

(b) Reissuance of License Following Revocation.

(1) A physician [~~An applicant~~] whose license has been revoked must complete in every detail the application for reissuance of license, including payment of the required application fee.

(2) The physician [~~applicant~~] whose license has been revoked must [~~submit a written request to the board's licensure division and~~] appear before a committee of the board for a determination regarding [~~to request~~] reissuance of license.

(3) A person may not apply for reissuance of a license that was revoked before the first anniversary of the date on which the revocation became effective.

(4) An application for reissuance of a license following revocation cannot be considered more often than annually.

(5) In addition to any other requirement set out in this chapter for reissuance of a license following revocation, a physician [~~an applicant~~] must also demonstrate compliance with current licensure eligibility requirements.

§167.3. Disposition of Application for Request for Reissuance of a Revoked License [~~Application for Reissuance of a Revoked License~~].

Pursuant to the Medical Practice Act, §164.151 and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to the dispositions of any applications for reissuance of a license to practice medicine.

(1) The board may make an informal disposition of any application for reissuance of a medical license following revocation by stipulation, agreed order, agreed settlement or default.

(2) In the event the board makes such a disposition of an application for reissuance of a medical license following revocation, the disposition shall be in writing and, if appropriate, the writing shall be signed by the applicant.

[~~(3) To facilitate the expeditious disposition of an application for reissuance following revocation, the board may provide an applicant with an opportunity to be heard before a committee of the board.~~]

(3) [~~(4)~~] If an opportunity to appear before a committee of the board is provided to an applicant, the applicant shall be provided with written notice of the hearing including the date and time and allegations [~~a copy of the completed application for reissuance of license by certified mail - return receipt requested, overnight or express mail, or registered mail~~] to the last mailing address of the applicant or the applicant's attorney on file with the board. The applicant shall also be provided with written notice of the time, date and location of the committee hearing and the rules governing the proceeding.

(4) [~~(5)~~] The committee hearing shall allow:

(A) board staff to present a synopsis of the allegations and the facts that supported the revocation of the applicant's medical license, and to address whether it is in the best interest of the public and the physician to return to the practice of medicine;

(B) the applicant the opportunity to reply to the board staff's presentation and offer relevant evidence;

(C) representation of the applicant by counsel; and

(D) presentation of oral or written statements by the applicant or the applicant's counsel.

(5) [~~(6)~~] At the conclusion of the applicant's presentation, the committee shall make a recommendation for disposition of the application for reissuance which may include:

(A) deferral pending receipt of additional information;

(B) denial of the request for reissuance;

(C) reissuance of an unrestricted license; or

(D) reissuance of a restricted license subject to any reasonable restrictions or conditions authorized by the Act and any other remedial actions found to be in the public's best interest.

(6) [~~(7)~~] An applicant who is offered a restricted license may either accept or reject the recommendations proposed by the committee. If the applicant accepts the recommendations, the applicant shall execute the agreement in the form of an agreed order [~~or affidavit as soon thereafter as is practicable~~]. If the applicant rejects the proposed agreement, the applicant shall be given the option of requesting judicial review in the manner provided by §164.009 of the Act.

(7) [~~(8)~~] Following acceptance and execution by the applicant of the agreement to restrictions on the applicant's license, the application for reissuance and the agreed order shall be submitted to the board for approval.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed reissuance of licensure subject to restrictions or conditions. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve the proposed order or otherwise denies the applicant's application for reissuance, the applicant shall be so informed and the board's decision shall be subject to judicial review in the manner provided by §164.009 of the Act.

§167.8. Certain Persons Ineligible for Reinstatement or Reissuance of License.

Except on express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interest of the public and of the person whose license has been suspended or revoked, the board may not reinstate or reissue a license to a person who license has been suspended or revoked because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code relating to dangerous drugs and controlled substances;

(2) Section 485.033, Health and Safety Code relating to inhalant paraphernalia; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) which is a federal law relating to controlled substances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706186
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-7016

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22 TAC §167.4, §167.5

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Medical Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the authority of the Texas Occupations Code Annotated, §§153.001,164.151, and 164.152, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles, or codes are affected by the proposal.

§167.4. Best Interests of Physician.
§167.5. Best Interests of the Public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

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Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-7016

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22 TAC §167.4, §167.5

The new sections are proposed under the authority of the Texas Occupations Code Annotated, §§153.001,164.151, and 164.152, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles, or codes are affected by the proposal.

§167.4. Best Interests of the Public.

Pursuant to §164.151 of the Act, a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the best interests of the public. Best interests of the public may include, but not be limited to, an assessment by the Board as to whether the physician demonstrates:

(1) remediation of any competency, technical, educational, training or ethical limitations as found in the order leading to revocation or suspension of a license or any competency, technical, educational, training or ethical limitations found since the entry of the order;

(2) that risk of further disciplinary proceedings for the revocation or suspension of the license will be minimal or minimized if the physician is returned to the practice of medicine and the public will adequately be protected, whether by probationary order or other terms and conditions as agreed to by the physician or authorized by §164.101 and §164.102 of the Act;

(3) that an adequate practice plan will be in place to reduce or eliminate the risk of further disciplinary proceedings by the board;

(4) continued medical competency such that the physician is able to provide the same standard of medical care as any applicant for a license under Chapter 163 of this title (relating to Licensure). Further, the board shall require an applicant for reissuance to meet the qualifications and requirements set forth in Chapter 163 of this title, including,

but not limited to documentation of completion of the process of a current application for licensure; and

(5) that the physician's services are needed and would benefit the citizens of Texas.

§167.5. Best Interests of Physician.

Pursuant to §164.151 of the Act, a physician may be reissued a medical license or reinstated to the practice of medicine only if the physician demonstrates that the reissuance or reinstatement is in the physician's best interests. Best interests of the physician may include, but not be limited to, an assessment by the Board as to whether the physician:

(1) understands all issues of competency, technical, educational, training or ethical limitations as found in the order which led to the revocation or suspension of a license; and

(2) demonstrates that risk of further disciplinary proceedings for the revocation or suspension of the license of the physician will be minimal or minimized if the physician is returned to the practice of medicine.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 177. CERTIFICATION OF NON-PROFIT HEALTH ORGANIZATIONS

22 TAC §§177.1, 177.3, 177.4, 177.6, 177.9, 177.13

The Texas Medical Board proposes amendments to §§177.1, 177.3, 177.4, 177.6, 177.9, and 177.13, concerning Certification of Non-Profit Health Organizations.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the rule review of Chapter 177.

The proposed amendments update the name of the Texas Medical Board, amend statutory references to the Business Organizations Code, and correct citations to other provisions in the Board's rules.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that, for the first five-year period the amended sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that, for each year of the first five years the amended sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be updated references and citations. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §162.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles, or codes are affected by the proposal.

§177.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

(1) Act--The Texas Medical Practice Act, Texas Occupations Code Annotated, Title 3 Subtitle B.

(2) Actively engaged in the practice of medicine--The physician on a full-time basis is engaged in diagnosing, treating or offering to treat any mental or physical disease or disorder or any physical deformity or injury or performing such actions with respect to individual patients for compensation and shall include clinical medical research, the practice of clinical investigative medicine, the supervision and training of medical students or residents in a teaching facility or program approved by the Liaison Committee on Medical Education of the American Medical Association, the American Osteopathic Association or the Accreditation Council for Graduate Medical Education, and professional managerial, administrative, or supervisory activities related to the practice of medicine or the delivery of health care services. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(3) Board--Texas Medical Board [~~State Board of Medical Examiners~~].

(4) Board of Directors--The board of the health organization whether referred to as the board of directors, the board of trustees or other title.

(5) Certification by the Board--In accordance with Chapter 162, Texas Occupations Code Annotated, the Board shall certify a health organization as a non-profit health organization; as a migrant, community, or homeless health center; or as a federally qualified health center.

(6) Chief Executive Officer--The officer of the health organization authorized in the articles of incorporation, the bylaws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which such officer may be designated by the health organization.

(7) Director--A member of a health organization's board of directors whether referred to as a director, trustee or other title.

(8) Member--A member of the health organization.

(9) Health Organization--An applicant for or holder of certification from the Texas Medical Board [~~State Board of Medical Examiners~~] under the Act, §162.001(b) and (c).

(10) Rules--The rules, 22 Texas Administrative Code Chapters 161 - 200, promulgated by the Texas Medical Board [~~State Board of Medical Examiners~~] pursuant to the Act.

(11) Supplier--

(A) A physician retained to provide medical services to or on behalf of the health organization; and

(B) any other person providing or anticipated to provide services or supplies to or on behalf of the health organization in excess of $10,000 during a twelve-month period.

§177.3. Qualifications for Certification as a 162.001(b) Health Organization.

A 162.001(b) health organization meeting the following qualifications shall be certified by the board:

(1) the health organization is formed solely by persons licensed by the board;

(2) the health organization is a non-profit corporation registered in Texas as a domestic corporation under the provisions of Bus. Org. Code Chapter 22 [~~the Texas Non- Profit Corporation Act~~];

(3) the board of directors of the health organization consists solely of persons licensed by the board and actively engaged in the practice of medicine without restrictions on their Texas medical licenses;

(4) the health organization is not established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act; and

(5) the health organization makes application, submits reports, pays fees and otherwise complies with the provisions of this chapter.

§177.4. Applications for Certification as a 162.001(b) Health Organization.

A health organization seeking certification under §162.001(b) of the Act shall submit an application to the board, to the attention of the Non-Profits department, on a form approved by the board. The application shall include:

(1) Initial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the health organization;

(B) indicating the names and mailing addresses of all members or that there are no members;

(C) indicating the names and mailing addresses of all officers; and

(D) indicating the names and mailing addresses of all directors.

(2) Initial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation of the health organization and attaching a copy of the current by-laws of the health organization including provisions that:

(A) the health organization is organized for any or all of the following purposes:

(i) the carrying out of scientific research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, or related areas;

(ii) the supporting of medical education in medical schools through grants and scholarships;

(iii) the improving and developing of the abilities of individuals and institutions studying, teaching, and practicing medicine;

(iv) the delivery of health care to the public;

(v) the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community.

(B) the physician(s) organizing and incorporating the health organization shall select the initial board of directors consistent with the mission, goals, and purposes of the health organization;

(C) the by-laws of the health organization shall be interpreted in a manner that reserves to the health organization through its retained physicians the sole authority to engage in the practice of medicine and reserves to the health organization through its board of directors the sole authority to direct the medical, professional, and ethical aspects of the practice of medicine;

(D) each director is required to immediately report to the board any action or event which such director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules;

(E) each director is required to individually disclose to the member(s), if any, and to the board of directors (at the times of nomination and appointment) and to the board (at the times of initial application and biennial reports) the identity of each financial relationship known to such director, if any, which such director has with any member, any other director, any supplier of the health organization or any affiliate of any member, other director, or supplier of the health organization, and to provide a concise explanation of the nature of each such financial relationship; and

(F) the termination of the retention of any physician to provide medical services on behalf of the health organization during such physician's term of retention may be accomplished only by the board of directors or its physician designee(s) and such termination shall be subject to due process procedures adopted by the board of directors or its physician designee(s) or provided by the retention agreement between the health organization and the subject physician.

(3) Initial Director Statements. Statements signed and verified by each current director indicating that:

(A) such director is licensed by the board;

(B) such director is actively engaged in the practice of medicine and has no restrictions on his or her Texas medical license;

(C) such director will, as a director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(D) such director will, as a director, exercise best efforts to cause the health organization to comply with all relevant provisions of the Act and the Rules;

(E) such director will, as a director, immediately report to the board any action or event which such director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules; and

(F) such director has disclosed within such director's statement the identity of all of such director's financial relationships, if any, of the type described in paragraph (2)(E) of this subsection and provided a concise explanation of the nature of each such financial relationship within such director's statement.

(4) Initial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the health organization is in compliance with the requirements for certification and con-

tinued certification as required by the provisions of the Act and the Rules.

(5) Initial Fee Payment. A fee in the amount and form specified by §175.1 of this title (relating to Application Fees) [~~the Rules~~].

§177.6. Biennial Reports for 162.001(b) Health Organizations.

Each health organization certified under the Act, §162.001(b), shall file with the board a biennial report in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year, and the biennial report shall include:

(1) Biennial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the health organization;

(B) indicating the names and mailing addresses of all members or that there are no members;

(C) indicating the names and mailing addresses of all officers;

(D) indicating the names and mailing addresses of all directors; and

(E) disclosing any changes in the composition of the board of directors since the last biennial report.

(2) Biennial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation and by-laws of the health organization if not already on file with the board and indicating:

(A) whether or not the by-laws or articles of incorporation of the health organization have been revised since the last biennial report;

(B) whether or not such revisions, if any, were recommended or approved by the board of directors; and

(C) a concise explanation of such revisions, if any.

(3) Biennial Director Statements. Statements signed and verified by each current director indicating that:

(A) such director is licensed by the board;

(B) such director is actively engaged in the practice of medicine and has no restrictions on his or her Texas medical license;

(C) such director will, as a director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(D) such director will, as a director, exercise best efforts to cause the health organization to comply with all relevant provisions of the Act and the Rules;

(E) such director will, as a director, immediately report to the board any action or event which such director reasonably and in good faith believes constitutes a violation or attempted violation of such Act or the Rules; and

(F) such director has disclosed within such director's statement the identity of all of such director's financial relationships, if any, of the type described in §177.4(2)(E) of this title (relating to Applications for Certification as a 162.001(b) Health Organization) and provided a concise explanation of the nature of each such financial relationship within such director's statement.

(4) Biennial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the Health Organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) Biennial Fee Payment. A fee in the amount and form specified by §175.2 of this title (relating to Registration and Renewal Fees) [~~the Rules~~].

§177.9. Migrant, Community or Homeless Health Centers.

(a) Section 162.001(c), non-profit health organizations. Migrant, community, or homeless health centers organized and operated under the authority of and in compliance with 42 U.S.C. §254b or §254c, or federally qualified health centers under 42 U.S.C. §1396(d)(1)(2)(B), that are non-profit corporations under Bus. Org. Code, Chapter 22, [~~the Texas Non-Profit Corporation Act, Article 1396-1.01, Texas Civil Statutes,~~] and the Internal Revenue Code, §501(c)(3), and who wish to obtain approval and certification to contract with and employ physicians pursuant to the Medical Practice Act, §162.001(c), Texas Occupations Code Annotated, Title 3 Subtitle B, may do so by submitting an application on a form approved by the board to the permits department of the board with the following attached documentation:

(1) a copy of the certificate of incorporation under the Texas Non-Profit Corporation Act;

(2) a copy of documentation verifying that a determination has been made that the organization is tax exempt under the Internal Revenue Code pursuant to §501(c)(3); and,

(3) a copy of documentation verifying that the organization is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §254b or §254c, or is a federally qualified health center under 42 U.S.C. §1396(d)(1)(2)(B).

(b) Initial Fee Payment. A fee in the amount and form specified by board rules.

(c) Biennial reports. Each organization approved and certified under the Act, §162.001(c), shall file with the board a completed biennial report on a board-approved form that contains updated and current information which would otherwise be required for initial approval and certification to contract with and employ physicians. The biennial report shall be submitted in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year. Failure to timely submit a required biennial report shall be grounds for denial of recertification to contract with and employ physicians pursuant to §177.10(e) of this chapter (relating to Review of Applications and Reports).

(d) Biennial Fee Payment. There is no biennial fee for health organizations certified pursuant to §162.001(c) of the Act.

§177.13. Complaint Procedure Notification.

(a) Method of Notification. For the purpose of directing complaints to the board regarding health-care delivery by licensees of the board practicing through non-profit health organizations certified pursuant to the Medical Practice Act, §162.001, the non-profit health organizations which are certified or otherwise approved pursuant to the Medical Practice Act, §162.001(b) and (c), shall provide notification to the public of the name, mailing address, and telephone number of the board by displaying in a prominent location at each site of health-care delivery and readily visible to patients or potential patients, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size

with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules:
Figure: 22 TAC §177.13(b)

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules:
Figure: 22 TAC §177.13(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER H. IMPOSITION OF ADMINISTRATIVE PENALTY

22 TAC §§187.75 - 187.82

The Texas Medical Board proposes new Subchapter H, §§187.75 - 187.82, concerning Imposition of Administrative Penalty.

This proposed new subchapter sets forth a procedure for the imposition of an administrative penalty as authorized by Occupations Code, Chapter 165, Subchapter A, §§165.001, et seq. for administrative violations as identified in §190.14 of this title (relating to Disciplinary Sanction Guidelines).

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the proposed new rules are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcing the sections will be to impose an administrative penalty which will provide an efficient procedure for disposing of minor administrative violations of the Medical Practice Act, while preserving the opportunity for licensees to present information to the board that no violation has occurred. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new sections are proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §165.002, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Texas Occupations Code Annotated, §§165.001, et seq. is affected by the proposal.

§187.75. Purposes and Construction.
The purpose of this subchapter is to set forth a procedure for the imposition of an administrative penalty as provided in Chapter 165, Subchapter A, §§165.001, et seq. of the Act, for administrative violations as identified in §190.14 of this title (relating to Disciplinary Sanction Guidelines).

§187.76. Notice of Intention to Impose Administrative Penalty; Response.
(a) Before an administrative penalty is imposed, the board will provide a licensee who is alleged to have committed an administrative violation with a notice of the allegations regarding an administrative violation and the amount of a proposed administrative penalty.

(b) Within 14 days after receipt of the notice, the licensee may respond to the notice as follows:

(1) The licensee may pay the proposed administrative penalty;

(2) The licensee may provide a written response to the board; or

(3) The licensee may request a personal appearance at an informal meeting.

§187.77. Payment of the Administrative Penalty.
If the licensee pays the administrative penalty, the payment shall be acknowledged on a copy of the notice, which shall constitute an agreed imposition of the administrative penalty. A report of the payments upon notice of intention to impose administrative penalties shall be made to the board at the next regular meeting, but no further action of the board shall be required.

§187.78. Written Response.
(a) The licensee may submit a written response without a request for a personal appearance prior to the imposition of an administrative penalty.

(b) If the licensee submits a written response within 14 days after the notice is received, the allegations and the written response shall be scheduled for an informal meeting of one or more board representatives without further notice to the licensee. Based on the written response, the board representative(s) may recommend dismissal of the matter or imposition of the administrative penalty. The recommendation of the board representative(s) shall be submitted to the Disciplinary Process Review Committee at the next regular meeting. The action of the Disciplinary Process Review Committee shall be submitted to the Board for approval.

(c) If the licensee submits a written response more than 14 days after the notice is received, but prior to imposition of an administrative penalty, the QA Committee of board employees may recommend dismissal of the matter. The written response and any recommendation of the QA Committee shall be submitted to the Disciplinary Process Review Committee at the next regular meeting. The action of the Disciplinary Process Review Committee shall be submitted to the Board for approval.

§187.79. Personal Appearance at an Informal Meeting.

(a) If, within 14 days after the notice is received, the licensee has requested a personal appearance at an informal meeting, an informal meeting shall be scheduled in accordance with §164.004(a)(2) of the Act before one or more board representatives.

(b) An informal meeting under this Subchapter may consider only the imposition of an administrative penalty and may not consider revocation, suspension, or any other sanction. The provisions of §187.18 of this title (relating to Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance) shall apply to the informal meeting, except that there may be one or more board representatives at the informal meeting, who may be either a physician or public member of the Board.

(c) The recommendation of the board representative(s) to impose the administrative penalty or to dismiss the allegations shall be referred to the Disciplinary Process Review Committee of the Board at the next regular meeting. The action of the Disciplinary Process Review Committee shall be submitted to the Board for approval.

§187.80. Imposition of Administrative Penalty.

(a) The board may enter an order imposing an administrative penalty in accordance with §165.004 of the Act if:

(1) the licensee fails to respond to the notice required by §187.76 of this title (relating to Notice of Intention to Impose Administrative Penalty; Response); or

(2) the Disciplinary Process Review Committee recommends that an administrative penalty be imposed.

(b) Upon imposition of an administrative penalty, the board shall notify the licensee of the board's order. The notice shall include a statement of the right of the licensee to judicial review of the order, in accordance with §165.005 of the Act.

(c) If the licensee pursues judicial review of the order, the administrative record shall include the notice of intention to impose an administrative penalty, any documents reviewed by board representatives at an informal meeting, including any written response provided by the licensee, the recommendation of the board representative(s), the minutes of the Disciplinary Process Review Committee, the minutes of the board imposing an administrative penalty, and the order imposing an administrative penalty.

(d) An administrative penalty imposed by the board shall be due and payable to the board within 60 days after the licensee receives notice of the board's order.

§187.81. Reports of Imposition of Administrative Penalty.

(a) An imposition of an administrative penalty shall be a public record.

(b) The imposition of an administrative penalty shall not be considered a restriction or limitation on the license of the licensee and shall not be reported to the National Practitioner Data Bank. The board's newsletter and any press release shall include only the number of administrative penalties imposed.

§187.82. Unpaid Administrative Penalties.

A licensee shall not be issued a registration permit until all administrative penalties imposed by the board have been paid.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes amendments to §322.1, concerning Provision of Services. The amendment adds language clarifying that instruction of individuals who are asymptomatic relating to the instruction being given includes the provision of information on health, wellness and fitness.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be better understanding by licensees and the public of what kind of instruction a PT may give to individuals who are asymptomatic relating to the instruction being given. The agency does not expect any financial impact on small businesses. No economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§322.1. Provision of Services.

(a) Initiation of physical therapy services.

(1) (No change.)

(2) Exceptions to referral requirement.

(A) (No change.)

(B) A PT may provide instructions to any person who is asymptomatic relating to the instructions being given without a referral, including instruction to promote health, wellness, and fitness.

(C) - (D) (No change.)

(3) (No change.)

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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CHAPTER 335. PROFESSIONAL TITLE

22 TAC §335.1

The Texas Board of Physical Therapy Examiners proposes amendments to §335.1, concerning Licensed Physical Therapist/Licensed Physical Therapist Assistant. The amendments describe proper usage of the titles PT and PTA, and formalize requirements for the use of the title "doctor" by physical therapists.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Maline also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be better understanding by licensees and the public of licensure designation, and more clarity about the use of the title "doctor" by physical therapists. The agency does not expect any financial impact on small businesses. No economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; e-mail: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§335.1. Licensed Physical Therapist/Licensed Physical Therapist Assistant.

(a) A licensed physical therapist shall use the title physical therapist or the initials PT. A licensed physical therapist assistant shall use the title physical therapist assistant or the initials PTA. No other titles or initials are conferred by a license from this board. [~~The licensed physical therapist may use the title physical therapist with the initials PT. The licensed physical therapist assistant may use the title physical therapist assistant with the initials PTA.~~]

(b) Any letters designating other titles, academic degrees, or certifications must follow the initials PT or PTA (example: Jane Doe, PT, DPT, GCS).

(c) A PT who has received a doctoral degree in physical therapy or related field and who uses the title "Doctor" or "Dr." in a clinical setting shall:

(1) In written form, include the name of the doctoral degree (example: Dr. Jane Doe, PT, DPT, Doctor of Physical Therapy, or Dr. John Doe, PT, PhD, GSC, Doctor of Philosophy).

(2) In a spoken communication, specify that he or she is a physical therapist (example: "Hello, I'm Dr. Jane Doe, your physical therapist".)

(d) A doctoral degree described in subsection (b) of this section shall be granted by an institution accredited by an accrediting agency recognized by the National Commission on Accrediting or the US Department of Education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-6900

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.25

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §371.25, concerning Residency Program Responsibilities and Temporary Licensure. The amendment is being proposed to make second or third year residency license renewals more efficient and expedient for established residents.

Hemant Makan, Executive Director, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications for state or local government as a result of adopting the amended section.

Mr. Makan has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of adopting the amended section will be the assurance of continuity of patient medical care at teaching hospitals due to efficient licensure for resident podiatric physicians. There will be no effect on small or micro-businesses. There will be no costs to persons who are required to comply with the amended rule.

Comments on or about the proposed amendment may be submitted to Janie Alonzo, Staff Services Officer V, Texas State

Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendment is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendment implements Texas Occupations Code, §202.251 and §202.259.

§371.25. Residency Program Responsibilities and Temporary Licensure.

(a) (No change.)

(b) The residency director will be held responsible for the entire program including but not limited to:

(1) - (2) (No change.)

(3) ensuring that all residency program attendees are properly licensed with the Board prior to participation in the program pursuant to §371.5(g) of this title (Applicant for License--Temporary License). A temporary license to practice podiatric medicine expires on June 30 of each year.

(c) (No change.)

(d) Licensure.

(1) All initial residency applicants shall complete the entire application for Temporary License for enrollment in an accredited graduate podiatric medical education (GPME) program.

(2) On application, an established Texas resident who has been initially enrolled and licensed in an accredited GPME program pursuing a second or third year residency shall renew his unexpired license by:

(A) paying to the Board before the expiration date of the license the required renewal fee;

(B) submitting proof of having successfully completed a course in cardiopulmonary resuscitation and provide a current certification to that effect;

(C) completing the "Memorandum of Understanding for Approved Residence Program" (form P6);

(D) completing the "Certificate of Acceptance for Postgraduate Training Program" (form P10).

(3) An applicant who fails to renew a temporary license prior to expiration will be required to submit an entirely new application for renewal.

(4) Established Texas Residents pursuing a second or third year residency will be issued a new license number upon annual renewal.

(e) The annual renewal application notification will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2007.

TRD-200706102
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-7000

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CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL

22 TAC §378.1

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §378.1, concerning Continuing Education Requirement. The amendment to §378.1 is being proposed upon request by the Texas Podiatric Medical Association (TPMA) in response to a nationwide move for healthcare practitioners of all types to attend courses, seminars, workshops, etc. on the issue of medical ethics in addition to rules and regulations pertaining to podiatric medicine in Texas. Furthermore, at the request of the TPMA, also in response to a nationwide move, the amendment is being proposed to increase the biennial CME requirement from 30 to 50 hours to ensure that podiatric physicians are keeping up with current trends in the practice of podiatric medicine.

Hemant Makan, Executive Director, has determined that for each year of the first five years the amendment is in effect there will be no fiscal implications for state or local government as a result of adopting the amended section.

Mr. Makan has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of adopting the amended section will be to equate CME requirements for podiatrists to that of organized medicine which increases the value of ongoing education to provide licensees with greater opportunities to learn new techniques, procedures and technology. The Ethics and Jurisprudence requirements will ensure that all licensees continually remain aware of their legal responsibilities towards patients and the practice of podiatric medicine. The 20 biennial increase may result in licensees incurring additional costs to suffice the requirement for extra hours. However, the Board has no jurisdiction or control over course amounts which may be provided by private or public entities. There will be no effect on small or micro-businesses.

Comments on or about the proposed amendment may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendment is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendment implements Texas Occupations Code, §202.301 and §202.305.

§378.1. Continuing Education Requirement.

(a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 50 [~~30~~] hours of continuing education every two years for the renewal of the license to practice podiatric medicine. Two hours of the required 50 [~~30~~] hours of biennial [~~annual~~] continuing education (CME) shall [~~may~~] be a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas. Topics on Healthcare Fraud, Professional Boundaries, Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses, including those sponsored by an entity approved by CPME, APMA, APMA affiliated organizations or governmental entities, are acceptable towards fulfilling this 2 hour requirement. [~~It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 30-hour bi-annual requirement meet the standards for CME as set by the Board. One hour of CME is defined as a typical fifty-minute classroom instructional session or its equivalent. Practice management, home study and self study programs will be accepted for CME credit hours only if the program is sponsored by the APMA, or the Council for Podiatric Medical Education. The licensee may obtain up to, but not exceed 10 hours of these types of hours per biennium.~~]

(b) (No change.)

(c) A licensee shall receive 100% credit for each hour of training (one hour of training equals one hour of CME) for non-podiatric medical sponsored meetings that are relative to podiatric medicine. The method used to determine whether the training is "relative" to podiatric medicine is: "will the training enhance the knowledge and abilities of the podiatric physician in terms of improved quality and delivery of patient care? "One hundred percent credit shall also be assigned to hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others at the discretion of the Board.

(d) It shall be the responsibility of the podiatric physician to ensure that all CME hours being claimed to satisfy the 50-hour biennial requirement meet the standards for CME as set by the Board. One hour of CME is defined as a typical fifty-minute classroom instructional session or its equivalent. Practice management, home study and self study programs will be accepted for CME credit hours only if the provider is approved by the Council for Podiatric Medical Education. The licensee may obtain up to, but not exceed 20 hours of the aforementioned hours per biennium.

(e) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six hours of CME credit (credit can only be obtained for one, not both). No on-line CPR certification will be accepted for CME credit. Contact courses only will be given CME credit.

(f) If a podiatric physician has an article published (not just submitted) in a peer review journal, (s)he may receive one hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.

(g) Attendance in a mandatory Podiatric Medical Reviewer initial training course will receive credit for four CME hours.

(h) Podiatric Medical Reviewers will receive one CME hour per case reviewed. A maximum of four CME hours per biennium is allowed for case reviews.

(i) These hours of continuing education must be obtained in the 24-month period immediately preceding the year for which the license was issued. The two-year period will begin on November 1 and end on October 31 two years later. The year in which the 50-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of 10 hours for the next CME period.

(j) Documentation of CME courses shall be made available to the Board upon request, but should not be sent to the Board via facsimile, or mailed with the annual license renewal form. Each licensee shall maintain the licensee's CME records at the licensee's practice location for four years, evidencing completion of the CME programs completed by the licensee. The Board shall conduct random checks of licensee CME documentation to ensure compliance with this rule.

(k) A percentage of podiatric physicians who renew their licenses will be required to produce proof of completion of the CME hours they affirmed obtaining on their annual license renewal notice. The licensees to be reviewed will be chosen randomly out of the pool of annual license renewal forms. Once a licensee has been randomly chosen for the CME audit, he/she will receive a letter requiring the licensee to submit to the Board proof of the hours claimed on the annual renewal form. Original documents will not be required; copies of certificates and forms will be sufficient.

(l) If the licensee does not comply with the request for CME documentation within 30 days of receipt of the letter, or if the licensee is unable to provide proof of the hours claimed on the annual renewal form, the licensee will be investigated by the Board. If the investigation reveals that the requirement was not met, the licensee may be disciplined. The penalty for non-compliance with the bi-annual CME requirement shall be a letter of reprimand and/or an administrative penalty per violation up to the maximum allowed by law.

(m) Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirement in order to maintain licensure.

(n) The Board may assess the continuing education needs of a licensee and require the licensee to attend continuing education courses specified by the Board.

(o) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of 50 hours required every two years.

[~~(c) Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six hours of CME credit (credit can only be obtained for one, not both). No on-line CPR certification will be accepted for CME credit. Contact courses only will be given CME credit.~~]

[~~(d) If a podiatric physician has an article published (not just submitted) in a peer review journal, (s)he may receive one hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.~~]

[~~(e) A licensee shall receive 50% credit for each hour of training (one hour of training equals one half hour of CME) for non-podiatric medical sponsored meetings that are relative to podiatric medicine. The yardstick used to determine whether the training is "relative" to podiatric medicine is: "will the training enhance the knowledge and abilities of the podiatric physician in terms of improved quality and delivery of patient care?" Fifty percent credit shall also be assigned to hospital grand rounds, hospital CME programs,~~

~~corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others at the discretion of the Board.]~~

~~[(f) Attendance in a mandatory Podiatric Medical Reviewer initial training course will receive credit for four CME hours.]~~

~~[(g) Podiatric Medical Reviewers will receive one CME hour per case reviewed. A maximum of four CME hours per biennium are allowed for case reviews.]~~

~~[(h) These hours of continuing education must be obtained in the 24-month period immediately preceding the year for which the license was issued. The two-year period will begin on November 1 and end on October 31 two years later. The year in which the 30-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year. A licensee who completes more than the required 30 hours during the preceding CME period may carry forward a maximum of 10 hours for the next CME period.]~~

~~[(i) Documentation of CME courses shall be made available to the Board upon request, but should not be sent to the Board via facsimile, or mailed with the annual license renewal form. Each licensee shall maintain the licensee's CME records at the licensee's practice location for four years, evidencing completion of the CME programs completed by the licensee. The Board shall conduct random checks of licensee CME documentation to ensure compliance with this rule.]~~

~~[(j) A percentage of podiatric physicians who renew their licenses will be required to produce proof of completion of the CME hours they affirmed obtaining on their annual license renewal notice. The licensees to be reviewed will be chosen randomly out of the pool of annual license renewal forms. Once a licensee has been randomly chosen for the CME audit, he/she will receive a letter requiring the licensee to submit to the Board proof of the hours claimed on the annual renewal form. Original documents will not be required; copies of certificates and forms will be sufficient.]~~

~~[(k) If the licensee does not comply with the request for CME documentation within 30 days of receipt of the letter, or if the licensee is unable to provide proof of the hours claimed on the annual renewal form, the licensee will be investigated by the Board. If the investigation reveals that the requirement was not met, the licensee may be disciplined. The penalty for non-compliance with the bi-annual CME requirement shall be a letter of reprimand and/or an administrative penalty per violation up to the maximum allowed by law.]~~

~~[(l) Licensees that are deficient in CME hours must complete all deficient CME hours and present year CME requirement in order to maintain licensure.]~~

~~[(m) The Board may assess the continuing education needs of a licensee and require the licensee to attend continuing education courses specified by the Board.]~~

~~[(n) Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of 30 hours required every two years.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2007.

TRD-200706103
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 305-7000

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Texas Department of Insurance proposes amendments to §9.1 and §9.401, concerning the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The proposed amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and Statistical Plan. The proposed amendments to §9.1 also correct a typographical error by updating the zip code referenced in the rule. The proposed amendments to the Basic Manual and Statistical Plan, which the proposed amended sections will adopt by reference, were considered at the rulemaking phase of the 2006 Texas Title Insurance Biennial Public Hearing held on September 5, 2007, Docket Number 2668. The rulemaking phase of the hearing was conducted pursuant to Insurance Code §2703.205. At the close of the September 5 hearing, the Commissioner directed that the record be held open for 30 days in order to allow additional written comments to be submitted regarding Items 2006-64, 2006-65, and 2006-67. In accordance with Insurance Code §2703.205(d), the ratemaking phase of the hearing was referred to the State Office of Administrative Hearings. This proposal is necessary to adopt new rules and forms and modify or replace currently existing rules and forms in the Basic Manual and Statistical Plan to facilitate the administration and regulation of title insurance and to clarify or standardize the rules and forms regulating the business of title insurance in the State of Texas.

The proposed amendments to the Basic Manual and Statistical Plan are identified by the item number used in the September 5 hearing. The proposal consists of 53 items. Publication of this proposal is necessary to incorporate the items proposed for approval into the Basic Manual and Statistical Plan. Items proposed for approval are detailed below along with a brief explanation of any substantive changes to the filings made subsequent to the September 5 hearing. The Department has also made changes to the filings to correct statutory references, typographical errors, and formatting errors. The Department proposes to deny approval of Items 2006-11, 2006-13, 2006-23, 2006-25, 2006-28, 2006-37, and 2006-64. Items 2006-18, 2006-20, 2006-21, 2006-41, and 2006-67 were withdrawn from consideration during the rulemaking phase of the hearing upon the respective request of the entities that originally filed the items for consideration.

The following items are proposed for approval:

Item 2006-1--Submission to adopt a new Co-Insurance Endorsement (Form T-48) to accommodate commercial lenders and owners who often request this endorsement in multi-state, multi-site, and other large transactions.

Item 2006-2--Submission to amend Procedural Rule P-6 to authorize a Co-insurer to issue a Co-insurance Endorsement to another Title Insurer's Owner or Mortgagee Policy when the co-insurance transaction exceeds fifteen million dollars.

Item 2006-3--Submission to repeal the current Verification of Services Rendered Form T-00 and adopt a new Form T-00 to organize the information each entity participating in the transaction must provide and to assist underwriters in reporting that information to the Department.

Item 2006-4--Submission to amend the Supplemental Coverage Manufactured Housing Unit Endorsement Form T-31.1 to conform to the new American Land Title Association form by clarifying the insurance against personal property liens and by ensuring that a foreclosure of an insured mortgage may be conducted by one procedure.

Item 2006-5--Submission to amend the Revolving Credit Endorsement Form T-35 to change the name to the Revolving Credit/Future Advance Endorsement Form T-35 and to conform to the American Land Title Association form by expanding coverage to the lender.

Item 2006-6--Submission to amend the Residential Real Property Affidavit T-47 by removing specific language in the affidavit that requires the name of the title company to be identified and to insert generic language to allow the affidavit to be prepared and executed early in the transaction process.

Item 2006-7--Submission to adopt a new Procedural Rule (P-63) that incorporates the procedural portion of Rate Rule R-2.(d) concerning a policy issued to a qualified intermediary under IRS Code 1031 and also contains deletions and improved formatting.

Item 2006-8--Submission to adopt a new Procedural Rule (P-64) regarding the treatment of subordinate liens and leases in order to better alert title companies to comply with the instruction in Procedural Rule P-11.b.(8).

Item 2006-9--Submission to adopt a new Procedural Rule (P-65) in conformity with Insurance Code §2704.051 and §2704.052 to require an Owner's Policy be issued in connection with a Mortgagee Policy unless the person acquiring title rejects it.

Item 2006-10--Submission to adopt a new Procedural Rule (P-66) to include procedures currently in other rate and procedural rules into one rule relating to determining the correct amount of insurance in owner and mortgagee polices.

Item 2006-12--Submission to amend Procedural Rule P-7 to incorporate the language from Bulletin 157 into the procedural rules and to resolve the question as to whether it is permissible to include the "successor in ownership" language as part of the Proposed Insured in a Commitment.

Item 2006-14--Submission to amend Procedural Rule P-21 to make the terms used in the rule consistent with Insurance Code §2651.203 and to update references to the Commissioner of Insurance.

Item 2006-15--Submission to amend Procedural Rule P-28 to eliminate the need for a company owning multiple title insurance companies to make multiple course submissions and/or assignments between the related title insurance company providers.

Item 2006-16--Submission to amend Procedural Rule P-45 to make the rule consistent with the federal requirements regarding the Maximum Claim Amount for FHA-insured loans and to allow the insured amount to be determined by lenders through a lender estimation of the maximum amount that may be secured by lien.

Item 2006-17--Submission to amend Procedural Rule P-53 to remove the sunset provision contained within the rule and to ensure that the rule will remain in effect beyond January 1, 2008. Submission to remove the sunset provision of P-53 is duplicative of Item 2006-42, and these items have been combined for efficiency.

Item 2006-19--Submission to amend Administrative Rule L-1 to provide that the Department must send notice of renewal to each agent at least 45 days prior to the expiration of the agent's license and, if not renewed, within 45 days after the license expires. The Department has clarified that the notice provision applies only to active licenses by adding language to the submission that stipulates the notice provision applies "[u]nless revoked, terminated, cancelled or previously surrendered by the holder." The Department has additionally clarified that the additional notice provision is administrative in nature and does not undermine the responsibility of the licensed agent to maintain a current license nor does the notice provision prejudice any enforcement action brought by the Department by adding the following language to the submission: "Failure of the department to send written notice of renewal or expiration shall not, in any event, toll the expiration date of the agent license nor prejudice any enforcement action brought by the department."

Item 2006-22--Submission to amend the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys, and Attorney's Licensed as Escrow Officers pertaining to the Policy Guaranty Fee and Guaranty Assessment Recoupment Charge to provide that maintaining a policy guarantee fee escrow account and a guaranty assessment recoupment charge escrow account separate from the agent's standard audited escrow account is optional.

Item 2006-24--Amended submission to amend the Owner Policy of Title Insurance Form T-1 based on the new 2006 American Land Title Association Owner's Policy.

Item 2006-26--Amended submission to amend the Mortgagee Policy of Title Insurance Form T-2 based on the new 2006 American Land Title Association Loan Policy.

Item 2006-27--Submission to amend Procedural Rule P-1 to rename the "Owner Policy" and the "Mortgagee Policy" to coincide with the terminology utilized in the corresponding American Land Title Association policies and to provide that the new terminology be incorporated into newly printed or electronically generated forms.

Item 2006-29--Amended submission to amend Procedural Rule P-32 to clarify time periods for retention of documents and to conform this procedural rule to the provisions of UETA and E-SIGN. The Department proposes to adopt the amended submission with changes to retain the original requirement that title insurance policies must be retained indefinitely.

Item 2006-30--Submission to amend Procedural Rule P-36 to conform with the proposed amendments to the Owner Policy and Mortgagee Policy and to increase the threshold for arbitral matters to two million dollars and delete the choice of law provision.

Item 2006-31--Submission to amend Procedural Rule P-37 to conform to the proposed amendments to the Owner Policy and Mortgagee Policy.

Item 2006-32--Submission to amend the Facultative Reinsurance Agreement Form T-18.1 based on changes contained in the new American Land Title Association's Reinsurance Agreement and to clarify a reinsurer's payment obligations.

Item 2006-33--Submission to amend the Restrictions, Encroachments, Minerals Endorsement T-19 to conform to the new American Land Title Association Endorsement 9.3-06, which may be issued with the proposed amended Mortgagee Policy T-2.

Item 2006-34--Submission to amend the Restrictions, Encroachments, Minerals Endorsement - Owner Policy T-19.1 to conform to the new American Land Title Association Endorsement 9.5-06, which may be issued with the proposed amended Owner Policy T-1.

Item 2006-35--Submission to amend the Tertiary Facultative Reinsurance Agreement (Type I) Form T-21.1 to conform to the proposed amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-36--Submission to amend the Tertiary Facultative Reinsurance Agreement (Type II) Form T-21.2 to conform to the proposed amendments to the Facultative Reinsurance Agreement Form T-18.1.

Item 2006-38--Amended submission to adopt a new Procedural Rule (P-67) to provide better auditing tools regarding Insured Closing and Settlement Letters and to ensure compliance with Texas Insurance Code Chapter 2702.

Item 2006-39--Submission to adopt a new Procedural Rule (P-68) to clarify that Insurance Code §§521.101 - 521.103 applies to the title industry and to ensure title industry compliance with the statute.

Item 2006-40--Submission to amend Procedural Rule P-1, subparagraph f. to conform the definition of closing the transaction to the statutory definition of closing the transaction in Insurance Code §2501.006.

Item 2006-42--Submission to amend Procedural Rule P-53 to remove the sunset provision contained within the rule and to ensure that the rule will remain in effect beyond January 1, 2008. Submission to remove the sunset provision of P-53 is duplicative of Item 2006-17, and these items have been combined for efficiency.

Item 2006-43--Submission to amend Insuring Forms T-7, T-1, T-1R, T-2, T-2R, and T-44 to remove outdated language regarding the consumer complaint notice.

Item 2006-44--Amended submission to amend the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers in Section V to clarify consumer charges in Specific Areas and Procedures 5 and to add language to Minimum Escrow Account Procedures and Internal Controls 18 to help identify fraudulent real estate transactions. The Department proposes to adopt the amended submission with changes to retain the original prohibition against pass through charges for search services.

Item 2006-45--Submission to amend Administrative Rule L-1 to clarify that a title insurance agent may not commence business in a county until authorized by the Department.

Item 2006-46--Submission to amend Administrative Rule L-2 to require attorneys who are licensed escrow officers to close the transaction in the title agent's name, to require attorneys who are licensed escrow officers to use the title agent's escrow account, and to require escrow officers to keep a current address on file with the Department.

Item 2006-47--Submission to amend Administrative Rule L-2 to clarify that a non-attorney employee of an attorney must be licensed as escrow officer prior to performing the duties of an escrow officer.

Item 2006-48--Submission to amend Administrative Rules L-1 and L-2 to ensure that the Title Agent and Escrow Officer licensing procedures are consistent with the Texas Business Organizations Code, which went into effect on January 1, 2006, and to simplify the merger, exchange, and conversion process when an organizational restructuring results in a less than 50% change in ownership.

Item 2006-49--Submission to amend Administrative Rule G-1 to clarify that Policy Guaranty Fees must be postmarked on or before the due date to be considered timely.

Item 2006-50--Amended submission to amend the Texas Title Insurance Statistical Plan to correct the listing of the County Code for Nolan County, to remove the Property Classification Codes for Texas Operations, and to add a new Standard Endorsement Code for Texas Operations relating to the Restrictions, Encroachment, Minerals Endorsement--Owner's Policy (T-19.1).

Item 2006-65--Amended submission to amend Procedural Rule P-24 to provide restrictions on a title insurance company, agent, or direct operation regarding prior written agreements that deviate from the premium split set forth in P-24. The Department proposes to adopt an amended submission received on October 4, 2007. The amended submission changes the premium split for transactions involving an insured policy amount in excess of $125,000 by requiring that payment shall not exceed fifty percent for furnishing title evidence, or furnishing title evidence and title examination, and shall not exceed fifty percent for closing the transaction, or closing the transaction and title examination. The amended submission also restricts prior written agreement arrangements by requiring that prior written agreements must be entered into 90 days prior to closing and by stipulating that the parties to the agreement must be licensed in the same or in contiguous counties when an insured policy amount is $125,000 or less. The amended submission further requires that all payments must be remitted within 30 days after the date of recording of the conveying instrument and that the prior written agreement restrictions apply also to escrow officers.

The following items are proposed for disapproval:

Item 2006-11--Submission to amend Procedural Rule P-1 to rename the "Owner Policy" and the "Mortgagee Policy" to coincide with the terminology utilized in the corresponding American Land Title Association policies and to provide that the new terminology be incorporated into newly printed or electronically generated forms.

Item 2006-13--Submission to amend Procedural Rule P-17 by allowing for electronic filing and recording of documents and to withdraw Bulletin 163 to allow a pass-through to consumers of electronic filing fees. The Department notes that while the development and utilization of new technology to promote efficiencies in closing the transaction is strongly encouraged, such efficiencies should also minimize additional increased economic impact to consumers. The Department will continue to work with parties

interested in amendments to Procedural Rule P-17 and revising Bulletin 163 to reflect acceptable practices regarding electronic filing and recording of documents. Interested parties are encouraged to organize and participate in a study group to determine a method of implementation of electronic filing and recording of documents that will minimize increased economic impact to consumers.

Item 2006-23--Submission to amend the Owner Policy of Title Insurance Form T-1 based on the new 2006 American Land Title Association Owner's Policy.

Item 2006-25--Submission to amend the Mortgagee Policy of Title Insurance Form T-2 based on the new 2006 American Land Title Association Loan Policy.

Item 2006-28--Submission to amend Procedural Rule P-32 to clarify time periods for retention of documents and to conform this procedural rule to the provisions of UETA and E-SIGN.

Item 2006-37--Submission to amend Administrative Rule L-1 to provide that, upon the filing of an application for a title insurance agent license, the Department must notify all currently licensed title insurance agents in the county in which the sponsoring title insurance company applicant is seeking approval and to provide that any currently licensed agent may make a written request to the Department for an on-site audit of the applicant's abstract plant facilities.

Item 2006-64--Submission to adopt a new Procedural Rule to ensure that title insurance companies do not receive more than 50% of their business through Affiliated Business Arrangements, to provide that 90% of the business of a title insurance company operating in connection with an Affiliated Business Arrangement must involve property located within the county in which the company is licensed, to provide notice requirements concerning Affiliated Business Arrangements, and to ensure that such arrangements are not coercive.

The following items have been withdrawn:

Item 2006-18--Submission to amend Administrative Rule L-2 to allow a Direct Operation, Title Insurance Agent, or an attorney licensed as an escrow officer to contract with a person to employ that person as a bona fide employee to perform any duty or work, other than that of an escrow officer, at or before an application for that person to be licensed as an escrow officer is filed with the Department and to remove the Department's ability to deny an application or decline to renew an escrow license while an investigation, audit inquiry, disciplinary action, or allegation of a violation is pending.

Item 2006-20--Submission to amend Administrative Rule L-1 to deny the Department the ability to deny an application or decline to renew the license of an agent while an investigation, audit inquiry, disciplinary action, or allegation of a violation is pending.

Item 2006-21--Submission to amend Administrative Rule L-3 to deny the Department the ability to deny an application or decline to renew the license of a Direct Operation while an investigation, audit inquiry, disciplinary action, or allegation of a violation is pending.

Item 2006-41--Submission to amend Procedural Rule P-22 to clarify the terms fee and payment, to clarify who may receive payment, to reduce administrative inefficiency associated with remittance, to prevent certain types of prohibited conduct, and to update references to revised Insurance Code provisions.

Item 2006-67--Submission to amend Procedural Rule P-24 to set reasonable percentage rates for payment for services for furnishing title evidence and title examination and to remove language in the rule that often prevents urban and rural agents from receiving the same amount of premium for the same work.

The Department has filed a copy of each of the proposed items with the Secretary of State's Texas Register Section. Persons desiring copies of the proposed items may obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701-3938. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

FISCAL NOTE. Robert R. Carter, Jr., Deputy Commissioner for the Title Division, has determined that, for each year of the first five years the proposals are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Carter has also determined that for each year of the first five years the amendments are in effect there are a number of public benefits anticipated as a result of the amendments to the Basic Manual and Statistical Plan. The updating and revising of the administrative rules, procedural rules, forms, endorsements, definitions, reporting forms, and Statistical Plan allow for consistent administration, facilitate the efficiencies of the Department, and the closing of title transactions. The new and updated promulgated forms will impose no additional regulatory costs on companies participating in the title insurance market, and the costs of reproducing forms, estimated to be no more than $.15 per page for the cost of a photocopy, should be fully compensated by the existing premium schedule. As to all proposals, the department anticipates no differential impact between small, large, and micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses. The Department's analysis of any possible costs for compliance with the proposal that are detailed in the Public Benefit/Cost Note section of this proposal are also applicable for small and micro businesses that opt to write title insurance. Additionally, the proposed rules and forms provide an economic opportunity for the businesses in the title insurance industry, and businesses will be profitably compensated by a fee schedule. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR COMMENTS. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 21, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104. An

additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered. Also, any comments received during or within 30 days of the hearing held on September 5, 2007, Docket Number 2668, are part of the record and have already been considered for purposes of this proposal.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

STATUTORY AUTHORITY. The amendments are proposed pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 2551 and 2703.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective April 1, 2008 [~~January 20, 2006~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-3938 [~~1998~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706236
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 463-6327

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SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

STATUTORY AUTHORITY. The amendments are proposed pursuant to Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 and 36.001. Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued, that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes Insurance Code Title 11, which concerns the regulation of title insurance. Section 2703.153 authorizes and requires the Commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 2551 and 2703.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules contained in the Texas Title Insurance Statistical Plan as amended effective April 1, 2008 [~~November 1, 2005~~]. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706235
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 37. FINANCIAL ASSURANCE

SUBCHAPTER I. FINANCIAL ASSURANCE FOR PETROLEUM UNDERGROUND STORAGE TANK SYSTEMS

30 TAC §§37.825, 37.830, 37.835, 37.840, 37.845, 37.855, 37.867, 37.870, 37.885

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §§37.825, 37.830, 37.835, 37.840, 37.845, 37.855, 37.870, and 37.885. The commission also proposes new §37.867.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed amendments is to incorporate into agency rules, changes to statute which are effective September 1, 2007, based on language in House Bill 1956, 80th Legislature, 2007.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking package, administrative changes have been made as necessary in accordance with Texas Register requirements.

Subchapter I - Financial Assurance for Petroleum Underground Storage Tank Systems

Existing §§37.825, 37.830, 37.835, 37.840, 37.845, and 37.855 are being amended to clarify and simplify the figures containing the required wordings for each of these financial assurance mechanisms. Each amended figure will now clearly indicate that each mechanism is covering both corrective action and compensating third parties for bodily injury and property damage caused by accidental releases as is already required by rule. Prior to December 22, 1998, corrective action coverage in many situations could be provided by using the State's Reimbursement Fund, meaning the owner or operator may have only been required to provide financial assurance for third party liability claims. Accordingly, existing mechanism wordings require mechanism providers to indicate which of the coverages was provided. Since that date, owners or operators are required to provide financial assurance for both types of coverage. The proposed wordings should limit confusion by mechanism providers as to which language should be included.

In addition, the proposed mechanism wording requirements will require that the TCEQ facility identification number be reflected on each mechanism for Texas located facilities. This change will more clearly associate the coverage provided with an individual facility and greatly assist the agency's ability to monitor financial assurance.

Finally, wording of the Chief Financial Officer's Letter in the proposed amendment to §37.825 will be changed to require disclosure of the fiscal year-end date for the most recent audited financial statements upon which the financial test is based. This will help ensure that the test is prepared using current financial information.

New §37.867 is proposed to comply with passage of House Bill 1956, which added a new subsection (e-2) to Texas Water Code (TWC), §26.352. TWC, §26.352(e-2) subsection states the following: "The owner or operator of a tank for which insurance coverage or other financial assurance has terminated shall dispose of any regulated substance in the tank at a properly licensed facility not later than the 90th day after the coverage terminates, unless the owner or operator provides the commission proof that the owner or operator maintains evidence of financial responsibility as required under Subsection (a)."

Proposed new §37.867 implements TWC, §26.352(e-2), while adding clarifications of how it will interact with existing agency rules. Proposed new §37.867(a) uses the term "empty" while placing the term "dispose" in subsection (b). This is intended to clarify the statutory requirement in TWC, §26.352(e-2) that regulated substances be "disposed of," so that it is clear that valuable petroleum product need not necessarily be sent to a waste disposal facility, when there may be a more productive course of action available, such as selling it back to a distributor, or to some other licensed transporter. The rule clarifies that the primary intent is simply that the tank be properly emptied. However, if the regulated substance is disposed of, then disposal must be done in accordance with all applicable requirements.

Proposed §37.867(c) addresses how the new section interacts with existing financial assurance requirements. Most importantly, the new rule does not create a "90-day window" where a tank owner/operator is exempt from the basic requirement of maintaining financial assurance. Rather, §37.867 addresses the specific issue of tanks being empty, by stating that tanks must be emptied by the 90th day after coverage terminates. The exception to this requirement would be that the owner or operator has re-obtained acceptable financial assurance within the 90-day period. A tank owner or operator could still have a general financial assurance violation during the 90-day period, but he or she would not receive a citation under §37.867 until after the 90-day period.

Proposed §37.867(d) addresses how the new rule interacts with existing §37.885. Tank owners or operators may avail themselves of this provision as they would have in the past, with the exception that they are still required to follow proposed §37.867 by ensuring that the tanks are empty within 90 days of financial assurance termination. For tank owners or operators where financial assurance has not terminated, existing §334.54 still applies: tanks may remain properly temporarily removed from service, with fuel in the tanks, indefinitely.

Proposed §37.867(e) ensures that the section as a whole does not affect the commission's authority to require a shutdown of a facility under TWC, §26.3475(e), nor any other sections, rules, or statutes, with regard to financial assurance.

In accordance with passage of HB 1956, this rulemaking proposal amends §37.870(b) to require that owners or operators of Underground Storage Tanks (USTs) must attach to the agency's self-certification form the appropriate document which consti-

tutes evidence of current financial assurance, i.e., for example, an insurance certificate. Currently, tank owners or operators merely sign the self-certification form which contains a declaration that they have current financial assurance.

This rulemaking proposal also amends §37.885 to clarify the circumstances under which an owner or operator is released from financial assurance requirements. The insertion of the phrase "properly temporarily removed from service, in accordance with the requirements of §334.54 of this title (relating to Temporary Removal from Service)" does not create a new substantive requirement. Rather, it is a clarification of existing language which used the phrase "removed from service" without specifying whether reference was being made to temporary or permanent removal from service, or both. The existing interpretation has been that reference was being made to both: either form of removal from service, if done properly, would release an owner or operator from financial assurance requirements.

Finally, §37.885 is amended to add subsection (b), which states that in order to be released from financial assurance requirements under this section, the owner or operator must notify the commission of the change in status in accordance with §334.7. This notification is not a new requirement; rather, it is a clarification of something that is already required under §§334.54(e)(2), 334.55(f)(1), and 334.7(d)(1)(B). A tank owner or operator who is nearing the end of his or her financial assurance term, but intends to close operations and no longer use his or her tanks, would need to comply with the removal from service provisions and notify the commission, before the tank owner or operator would be released from financial assurance requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rulemaking.

The proposed rulemaking implements certain provisions of HB 1956, 80th Legislature, Regular Session by requiring Underground Storage Tank (UST) owners or operators whose financial assurance is cancelled or non-renewed to remove any regulated substances from the tanks not later than 90 days after their financial assurance has terminated unless the owner or operator submits proof of financial assurance. The proposed rulemaking requires UST owners or operators to provide proof of financial assurance along with self certification forms and also clarifies when financial assurance may be released.

HB 1956 also required UST financial assurance providers to submit notice to TCEQ after cancellation or non-renewal of policies. The Texas Department of Insurance will enforce the requirement that financial assurance providers must provide cancellation notices and is currently drafting rules to that effect. The bill established a minimum administrative penalty for not maintaining adequate financial assurance and gave the commission direct authority to shut down a UST system whose owner or operator does not maintain adequate financial assurance. These additional requirements are being implemented through policy changes.

The proposed rulemaking is expected to have a fiscal impact on the agency, though in general, the impact is not anticipated to be significant. Agency Financial Assurance staff will need to track any cancellation notices that are received from financial assurance providers, send compliance request letters to UST owners and operators, review documentation to determine when enforcement action is needed, make and approve Consolidated Compliance and Enforcement Database (CCEDS) entries/enforcement referrals where appropriate, and provide case support and expertise to enforcement and legal staff. Depending upon the volume of financial assurance cancellations received, the agency may need to reallocate staff resources.

Any enforcement costs for the Texas Department of Insurance are not expected to be significant. State and federal entities that own or operate a UST are already exempt from financial assurance requirements. Non-exempt local governments that own or operate an affected UST would not be affected by the proposed rulemaking unless they allow their financial assurance to terminate. Therefore, the proposed rulemaking is not anticipated to have significant fiscal implications for units of state or local governments.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be compliance with state law and the provision of safeguards for the protection of public health and safety by requiring those UST owners and operators who do not maintain their financial assurance policies to remove fuel from the UST.

The proposed rulemaking is not expected to have fiscal implications for UST owners and operators. It is assumed that of the approximately 18,900 UST facilities, most of them will maintain their financial assurance policies. Any costs for UST owners or operators to provide proof of financial assurance along with their self certification forms are expected to be minimal.

For those owners and operators who do not maintain their financial assurance and become subject to the proposed rulemaking, the tank owner would have to remove any fuel in the UST, possibly resulting in a loss of the inventory value. There may be other costs such as those for a vacuum truck to remove the fuel from the tank (estimated to be between 40 and 50 cents per gallon).

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rulemaking is not expected to have fiscal implications for UST owners and operators. It is assumed that of the approximately 18,900 UST facilities, most of them will maintain their financial assurance policies. Any costs for UST owners or operators to provide proof of financial assurance along with their self certification forms are expected to be minimal.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small or micro-business in a material way for the first five years that the proposed rulemaking is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect any local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the specific intent of this rule is to "protect the environment" by tightening regulations which ensure that there are private funds available for clean up and liability for releases from underground storage tanks, the second prong of the definition of a "major environmental rule" is not met: The proposed rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Further, it does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a). That section states: "(a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law." These proposed rules do not meet any of the four applicability requirements and thus are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225 even if they did meet the definition of a major environmental law. Specifically, the proposed rules are required by state law, are not proposed solely under the general powers of the agency, and do not exceed a requirement of state law, federal law, or a delegation agreement or contract between the state and an agency or representative of the federal government.

Written comments on the draft regulatory impact analysis determination of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

The proposed rules are an "action taken in response to a real and substantial threat to public health and safety" in that contamination from releases from underground storage tanks pose a threat to both soils and groundwater with which the public may come into contact. The proposed rules are "designed to significantly advance the health and safety purpose" by tightening regulations that ensure that private funds are available for addressing contamination from releases from underground storage tanks. The proposed rules "do not impose a greater burden than is necessary to achieve the health and safety purpose" because they are narrowly tailored to the class of tank owners or operators and narrowly tailored to specific conditions or events, such as termination of financial assurance coverage.

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The proposed rules implement HB 1956, which amended Texas Water Code, §26.352, concerning Financial Responsibility.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. There are no burdens imposed on private real property from these proposed rules and the benefits to society are the proposed rules' specific procedures and requirements for ensuring that underground storage tanks have financial assurance coverage. As a whole, this rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules (31 TAC §505.11(b)(2)) subject to the Texas Coastal Management Program (CMP) and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

CMP Goals: 31 TAC §501.12 states in part that "the goals of the Texas Coastal Management Program (CMP) are: (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); (2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; (3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;" and "(5) to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone."

The previously stated goals will not be adversely affected by the rule changes described in this preamble for the reason that the rulemaking provides for increased enforcement of financial assurance requirements for underground storage tank owners or operators.

CMP Policies: 31 TAC §501.13, "Administrative Policies," states in relevant part: "(a) Agency and subdivision rules and ordinances subject to §501.10 of this title (relating to Compliance with Goals and Policies) shall: (1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §505.11 of this

title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program); (2) identify the monitoring established to ensure that activities authorized by actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) comply with all applicable requirements; (3) identify circumstances in which agencies and subdivisions have the authority to issue variances from standards or requirements for the protection of CNRAs, including the grounds for granting variances."

The previously stated policies will not be adversely affected by the rule changes described in this preamble for the reason that there are no substantive changes relating to provision of information, monitoring of compliance, or variances.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 17, 2008 at 10:00 a.m. in E201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-038-037-AS. The comment period closes January 22, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Rob Norris, Financial Administration Division, (512) 239-6239 or Cullen McMorrow, Litigation Division (512) 239-0607.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); and TWC, §26.352, which directs the commission to adopt rules establishing the requirements for maintaining evidence of financial responsibility for taking corrective action in response to a release from a UST.

The proposed rule package implements changes in laws of this state made during the 80th Legislature, 2007, with the passage of House Bill 1956.

§37.825. Financial Test of Self-Insurance.

(a) An owner, operator, and/or guarantor, may satisfy the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Assurance) by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner, operator, and/or guarantor must meet the criteria of subsections (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b) The owner, operator, and/or guarantor must meet the requirements of this subsection referred to as Alternative 1. The owner, operator, and/or guarantor must:

(1) have a tangible net worth of at least ten times:

(A) the total of the applicable aggregate amount required by §37.815 of this title based on the number of underground storage tanks for which a financial test is used to demonstrate financial assurance to the agency under this section;

(B) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial assurance to the agency under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), 40 Code of Federal Regulations (CFR) Parts 264, 265, or state equivalent;

(C) the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial assurance to the agency under Chapter 331 of this title (relating to Underground Injection Control), 40 CFR Part 144 or state equivalent;

(D) the sum of municipal solid waste cost estimates for which a financial test is used to demonstrate financial assurance to the agency under Chapter 330 (relating to Municipal Solid Waste), 40 CFR Part 258 or state equivalent;

(E) the sum of current polychlorinated biphenyl (PCB) cost estimates for which a financial test is used to demonstrate financial assurance to the EPA under 40 CFR Part 761; and

(F) the sum of additional financial assurance obligations not identified in subparagraphs (A) - (E) of this paragraph and for which a financial test or other form of self-insurance is used to meet financial assurance obligations under the commission or other federal or state environmental regulations;

(2) have a tangible net worth of at least $10 million;

(3) have a letter signed by the chief financial officer as specified in subsection (d) of this section;

(4) either:

(A) file financial statements annually with the United States Securities and Exchange Commission (SEC), the Energy Information Administration, or the Rural Electrification Administration; or

(B) report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A;

(5) the firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c) The owner, operator, and/or guarantor must meet the requirements of this subsection referred to as Alternative 2.

(1) The owner, operator, and/or guarantor must meet the financial test requirements of §37.541(a) and (b) of this title (relating to Financial Test for Liability), substituting the appropriate amounts specified in §37.815(b)(1) and (2) of this title for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(A) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(B) The owner, operator, and/or guarantor, must have a letter signed by the chief financial officer as specified in subsection (d) of this section.

(3) If the financial statements of the owner, operator, and/or guarantor, are not submitted annually to the SEC, the Energy Information Administration or the Rural Electrification Administration, the owner, operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(A) the accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) in connection with that procedure:

(i) such amounts were found to be in agreement; or

(ii) no matters came to the attention of the independent certified public accountant which indicated that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under subsection (b) or (c) of this section, the chief financial officer of the owner, operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in parentheses are to be replaced by the relevant information and the parentheses deleted.

Figure: 30 TAC §37.825(d)

[~~Figure:~~ ~~30~~ ~~TAC~~ ~~§37.825(d)~~]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The agency may require reports of financial condition at any time from the owner, operator, and/or guarantor. If the agency finds, on the basis of these reports or other information, that the owner, operator, and/or guarantor, no longer meets the financial test requirements of subsections (b) or (c) and (d) of this section, the owner or operator must obtain alternative coverage within 30 days after notification of this finding.

(g) If the owner or operator fails to obtain alternate financial assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the executive director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the executive director of this failure within ten days.

§37.830. Guarantee.

(a) An owner or operator may satisfy the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) a firm that:

(A) possesses a controlling interest in the owner or operator;

(B) possesses a controlling interest in a firm described under subparagraph (A) of this paragraph; or

(C) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of §37.825 of this title (relating to Financial Test of Self-Insurance) based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in §37.825(d) of this title and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the agency notifies the guarantor that he or she no longer meets the requirements of the financial test of §37.825(b) or (c) and (d) of this title the guarantor must notify the owner or operator within ten days of receiving this notification from the agency. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in §37.890(c) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance).

(c) The guarantee must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Figure 30 TAC §37.830(c)

[~~Figure~~ ~~30~~ ~~TAC~~ ~~§37.830(c)~~]

(d) An owner or operator who uses a guarantee to satisfy the requirements of §37.815 of this title must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the executive director under §37.880 of this title (relating to Drawing on Financial Assurance Mechanisms). This standby trust fund must meet the requirements specified in §37.855 of this title (relating to Standby Trust Fund).

§37.835. Insurance and Risk Retention Group Coverage.

(a) An owner or operator may satisfy the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. This insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement as specified in paragraph (1) of this subsection or evidenced by a certificate of insurance as specified in paragraph (2) of this subsection, except that instructions in parentheses must be replaced with the relevant information and the parentheses deleted.

(1) Endorsement.
Figure: 30 TAC §37.835(b)(1)
[~~Figure: 30 TAC §37.835(b)(1)~~]

(2) Certificate of Insurance.
Figure: 30 TAC §37.835(b)(2)
[~~Figure: 30 TAC §37.835(b)(2)~~]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or is eligible to provide insurance as an excess or surplus lines insurer in Texas.

§37.840. Surety Bond.

(a) An owner or operator may satisfy the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the United States Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in parentheses must be replaced with the relevant information and the parentheses deleted.
Figure: 30 TAC §37.840(b)
[~~Figure: 30 TAC §37.840(b)~~]

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of §37.815 of this title must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the executive director under §37.880 of this title (relating to Drawing on Financial Assurance Mechanisms). This standby trust fund must meet the requirements specified in §37.855 of this title (relating to Standby Trust Fund).

§37.845. Letter of Credit.

(a) An owner or operator may satisfy the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in Texas and whose letter of credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.
Figure: 30 TAC §37.845(b)
[~~Figure: 30 TAC §37.845(b)~~]

(c) An owner or operator who uses a letter of credit to satisfy the requirements of §37.815 of this title must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid under a draft by the executive director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the executive director under §37.880 of this title (relating to Drawing on Financial Assurance Mechanisms). This standby trust fund must meet the requirements specified in §37.855 of this title (relating to Standby Trust Fund).

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

§37.855. Standby Trust Fund.

(a) An owner or operator using any one of the mechanisms authorized by §37.830 of this title (relating to Guarantee), §37.840 of this title (relating to Surety Bond), or §37.845 of this title (relating to Letter of Credit) must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the State of Texas.

(b) The standby trust agreement or trust agreement must be worded as follows, except the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.
Figure: 30 TAC §37.855(b)
[~~Figure: 30 TAC §37.855(b)~~]

(c) The standby trust agreement or trust agreement must be accompanied by a formal certification of acknowledgment similar to the following:
Figure: 30 TAC §37.855(c) (No change.)

(d) The executive director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the executive director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(e) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

§37.867. Duty to Empty Tanks After Termination of Financial Assurance.

(a) The owner or operator of a tank for which insurance coverage or other financial assurance has terminated shall ensure that the tank is empty, as defined in §334.54(d) of this title (relating to Temporary Removal from Service), not later than the 90th day after the coverage terminates, unless the owner or operator provides the commission proof that the owner or operator maintains evidence of financial responsibility. The owner or operator shall demonstrate that the tank is empty by submitting evidence satisfactory to the executive director if requested by the executive director.

(b) Any regulated substances removed from the tank must be handled properly, in accordance with agency requirements. If the regulated substances are disposed of, disposal must be at a properly licensed facility.

(c) Failure to empty a tank, or to demonstrate to the executive director that it has been emptied as required under subsection (a) of this section may be considered by the commission to be a separate violation in addition to a violation for failure to maintain financial assurance as required by §37.815 of this title (relating to Amount and Scope of Required Financial Assurance).

(d) An owner or operator may demonstrate that the owner or operator had been released from financial assurance requirements by having met all the requirements of §37.885 of this title (relating to Release from the Requirements) prior to the date of financial assurance termination. However, even in the case where a tank has been properly temporarily removed from service by having met all the requirements of §334.54 of this title, including corrosion protection and leak detection, regulated substances may not remain in the tank longer than 90 days, in accordance with subsection (a) of this section.

(e) Subsection (a) of this section does not affect the commission's authority to require a shutdown of a facility under Texas Water Code, §26.3475(e), nor any other sections, rules, or statutes, with regard to financial assurance.

§37.870. Reporting, Registration, and Certification.

(a) Reporting. An owner or operator must submit the appropriate forms listed in §37.875(b) of this title (relating to Financial Assurance Recordkeeping) documenting current proof of financial assurance to the executive director:

(1) within 30 days after the owner or operator identifies a release from an underground storage tank (UST) required to be reported under Chapter 334, Subchapter D of this title (relating to Release Reporting and Corrective Action), unless current financial assurance documentation is already on file with the agency;

(2) if the owner or operator fails to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:

(A) commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming a provider of financial assurance as a debtor;

(B) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

(C) failure of a guarantor to meet the requirements of the financial test; or

(D) other incapacity of a provider of financial assurance;

(3) as required by §37.825 of this title (relating to Financial Test of Self Insurance) and §37.865 of this title (relating to Cancellation or Non-renewal by a Provider of Financial Assurance); or

(4) when requested by the agency.

(b) Registration. An owner or operator must register and update the registration whenever there is a change in the financial assurance mechanism or coverage amount, as specified in §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems [~~systems~~]). The owner or operator must identify, in the appropriate space on the authorized agency form, the financial assurance mechanisms used to demonstrate compliance with corrective action and third party liability as described in this subchapter. The owner or operator must submit with the form documentation evidencing current financial assurance. Appropriate documentation is that described in this subchapter, or otherwise indicated by the commission in instructions on the form.

(c) For certification requirements for petroleum USTs, refer to §334.8(b) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems [~~systems~~]).

§37.885. Release from the Requirements.

(a) An owner or operator is no longer required to maintain financial assurance under this subchapter for an underground storage tank after the tank has been: [~~removed from service, or, if corrective action is required, after corrective action has been completed and the tank has been properly removed from service in accordance with the requirements of §334.55 of this title (relating to Permanent Removal from Service).~~]

(1) properly temporarily removed from service, in accordance with the requirements of §334.54 of this title (relating to Temporary Removal from Service);

(2) properly permanently removed from service in accordance with the requirements of §334.55 of this title (relating to Permanent Removal from Service); or

(3) if corrective action is required, after corrective action has been completed and the tank has been properly removed from service in accordance with the requirements of §334.55 of this title.

(b) In order to be released from financial assurance requirements under this section, the owner or operator must notify the commission of the change in status in accordance with §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706175
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 239-0177

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER D. PERMIT RENEWALS

30 TAC §116.315

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §116.315.

The amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission proposes revisions to Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, §116.315, Permit Renewal Submittal, as a result of passage of Senate Bill 1673 (SB 1673), 80th Legislature, Regular Session, 2007. This legislation amended Texas Health and Safety Code, §382.055, Review and Renewal of Preconstruction Permit. Senate Bill 1673 allows the commission to process a renewal application at the same time as an amendment for a preconstruction permit, provided the amendment application is filed not more than three years before the date the permit is scheduled to expire and is subject to notice requirements under Texas Health and

Safety Code, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing. In order for the commission to process a renewal application concurrently with such an amendment application, the applicant must not object. The changes to Texas Health and Safety Code, §382.055 became effective May 9, 2007.

SECTION DISCUSSION

§116.315. Permit Renewal Submittal.

The commission proposes to modify the language in this section to account for applications that will be submitted earlier than 18 months prior to the expiration of the permit. The commission proposes to add a description of the SB 1673 limitations for submitting a renewal application concurrently with an amendment application. The commission also proposes to delete a reference to the May 1, 2004, effective date, as it is no longer needed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

The proposed rule would amend Chapter 116 to implement the provisions of SB 1673, 80th Legislature, Regular Session, which make it possible to process certain renewal applications at the same time as an amendment for preconstruction permits under the Clean Air Act. Under the proposed rule, an amendment application must be filed not more than three years before the date the permit is scheduled to expire. Submitting the renewal application in conjunction with an amendment application is optional for the applicant, and the amendment application must be subject to notice requirements required by Texas Health and Safety Code, §382.056. The proposed rule does not impose any new fees or change the amount of current fees.

The proposed rule provides applicants with more flexibility and convenience during the renewal process. If an applicant chooses to process a renewal application at the same time as an amendment for a preconstruction permit, the applicant would be required to pay the existing renewal and amendment fees concurrently. Staff is unable to estimate the number of local governments that might choose the combined application process.

Amendment fees for preconstruction permits can range from $900 to $75,000 depending on the capital size of the project. Renewal fees can range from $600 to $10,000 based on a facility's total allowable emissions. If a local government chooses to process a renewal application along with an amendment for a preconstruction permit, combined fees could be as much as $1,500 to $85,000. By submitting a combined renewal and amendment application, local governments would only have to track one instead of two application packages and would also only be required to publish one public notice instead of two. The cost savings for not publishing an additional public notice could be as much as $6,000 depending on the rates charged by newspapers in the surrounding area.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be the addition of an optional, more efficient air permitting process that continues to protect the environment and public health and safety.

Under the proposed rule, applicants could choose to process a renewal application at the same time as an amendment for a preconstruction permit. Staff is unable to estimate the number of businesses that would choose to utilize the combined application process.

Instead of tracking two separate applications as is done under current rule, applicants would have to track only one application if they choose this option. Although permit fees for these applications are not changing, applicants would have to pay both fees if they submit the combined package. Combined fees could range from $1,500 to $85,000 depending on capital requirements and the amount of a facility's emission limits. Cost savings associated with publishing one instead of two public notices could be as much as $6,000 depending on the rates charged by newspapers in the surrounding area. Since submitting a combined application is an option for permit holders and merely changes the timing of paying permit fees, the proposed rule is not expected to have a significant fiscal impact on individuals and large businesses.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule does not change the amount of fees paid and gives small or micro-businesses the option of choosing a more efficient permitting process regarding amendments to preconstruction permits and permit renewals. If a small business chooses the optional application process, it would incur the same combined application fees and experience the same savings regarding public notices as those incurred by local governments and large businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed amendment does not meet the definition of a (major environmental rule(as defined in that statute. According to Texas Government Code, §2001.0225(g)(3), a "major environmental rule" is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this proposed rulemaking is to implement SB 1673, passed during the 80th Legislature, Regular Session, 2007. This legislation allows the

commission to process a renewal application at the same time as an amendment provided the amendment application is filed not more than three years before the date the permit is scheduled to expire, is subject to notice requirements under Texas Health and Safety Code, §382.056, and the applicant does not object. In addition, the regulatory analysis requirements of Texas Government Code, §2001.0225, only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the proposal will amend the commission rule regarding permit renewal application submittals that will allow renewal applications be processed by the commission concurrently with amendment applications provided certain conditions are met. The proposed amendment would implement changes to rule as a result of passage of SB 1673 in the 80th Legislature, Regular Session, 2007. This proposal therefore does not exceed an express requirement of federal law. The amendment is needed to implement state law but does not exceed those new requirements. The proposed rule does not involve a delegation agreement or contract between the state and federal government to implement a state and federal program. Finally, this proposed rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.0518, 382.055, and 382.056. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the proposed rule. Promulgation and enforcement of the rule will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rule also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the government action. Therefore, the proposed rule will not cause a "taking," as defined under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amended sections are applicable requirements under the Federal Operating Permits Program, but no revisions to operating permits will be required as a result of this rulemaking.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 29, 2008, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted via the e Comments system. All comments should reference Rule Project Number 2007-024-116-PR. The comment period closes February 4, 2008. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Becky Southard, Air Permits Division, at (512) 239-1638.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under THSC, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission

to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, which authorizes the commission to issue permits for modification to an existing facility that may emit air contaminants; §382.055, which authorizes the commission to review and renew preconstruction permits according to a specific schedule; and §382.056, which authorizes the commission to require applicants for a permit amendment or permit renewal to publish notice of intent to obtain the authorization.

The proposed amendment implements TWC, §5.103, THSC, §§382.011, 382.012, 382.017, 382.0518, 382.055, and 382.056, and SB 1673, 80th Legislature, Regular Session, 2007.

§116.315. Permit Renewal Submittal.

(a) With the exception of subsections (b) and (c) of this section, an [~~An~~] application for renewal must be submitted at least six months, but no earlier than 18 months, prior to expiration of the permit or the permit will expire. [~~This subsection will be effective on May 1, 2004.~~]

(b) With executive director approval, the application may be submitted before or after the time period specified in subsection (a) of this section.

(c) A renewal application with appropriate fee may be submitted at the same time as an amendment application to modify an existing facility as long as it is submitted not more than three years before the permit's expiration date and the amendment is subject to public notice requirements under Texas Health and Safety Code, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing.

(d) [~~(c)~~] Any permit issued:

(1) before December 1, 1991, is subject for review 15 years after the date of issuance;

(2) on or after December 1, 1991, is subject for review every ten years after the date of issuance; or

(3) at non-federal sources on or after December 1, 1991, may, for cause, contain a provision requiring renewal between five and ten years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706173
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 239-0177

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CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER I. COMPUTER EQUIPMENT RECYCLING PROGRAM

30 TAC §§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145, 328.147, 328.149, 328.151, 328.153, 328.155

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145, 328.147, 328.149, 328.151, 328.153, and 328.155.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2714, passed by the 80th Legislature, 2007, requires the commission to help implement a computer-recycling program based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. The legislation authorizes the commission to adopt rules to help implement the program. The TCEQ would be able to help implement the program more efficiently if rules were adopted. The legislation also states that any rules the commission does adopt must be adopted by May 1, 2008.

SECTION BY SECTION DISCUSSION

A stakeholder meeting was held on July 13, 2007. Since there was no draft rule before the stakeholder meeting, the proposed rules have been based directly on stakeholder input, including much of the proposed rules that are essentially unchanged language from the legislation. The proposed rules reflect stakeholder input made at the meeting and up until July 21, 2007. The commission's duties under HB 2714 will be incorporated into procedures.

§328.131, Purpose

Proposed new §328.131 explains the purpose of proposed new Subchapter I, Computer Equipment Recycling Program, which is to help establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment.

§328.133, Applicability and Effective Date

Proposed new §328.133 seeks to clarify the legislation in two ways. One, in proposed subsection (c) of this section, it adds a description of the persons to whom the subchapter would apply. Two, it makes clear in proposed subsection (e) which rules apply to computer recyclers. Also note, pursuant to HB 2714, the effective date of the enforcement provisions of §328.143(d) and (e) and of the penalty provisions of §328.153 and §328.155 is September 1, 2008, regardless of the effective date of the rest of this rule.

§328.135, Definitions

Proposed new §328.135 defines terms. The commission proposes to include three definitions in addition to those listed in HB 2714: for "computer," "retailer," and "tuner." This is because the terms, "computer" and "retailer," are used, but not defined, in HB 2714. The proposed definition of "computer" is from the dictionary. The commission proposes a definition of "retailer" based on stakeholder input. The term, "tuner," is uncommon enough in everyday dialect that defining it would be helpful. Its proposed definition is from the dictionary. The commission also proposes to add two items to the legislation's definition of "computer equipment:" a keyboard and a mouse. From the practical standpoint of discarding one's "computer," keyboards and mice are essentially synonymous with "computer."

§328.137, Manufacturer Responsibilities

The commission proposes new §328.137 to list the responsibilities of manufacturers under the proposed subchapter. The proposed responsibilities are essentially unchanged from those

listed in the legislation, with the exception of minor reorganization and a substitution for one term. The legislation uses the phrase, "computer equipment that has reached the end of its useful life," whereas the proposed rules, in §328.137(b)(1), incorporate the phrase, "used computer equipment." This is because computer equipment that has reached the end of its useful life for one consumer may not have reached the end of its useful life for another. The proposed language is an effort to be consistent with the legislation's intent. Due to the possibility of an Internet link changing, §328.137(b)(2) proposes that if a manufacturer's Internet link to recovery information is going to change, the manufacturer notify the commission 30 days in advance of the change.

Proposed new §328.137(f)(1) requires a manufacturer to include, on its publicly available Internet site, a list of all of the manufacturer's brands, both those in use and no longer in use. The legislation requires any rules required for implementation to be adopted by May 1, 2008. Proposed new §328.137(f)(2) requires manufacturers to submit recovery plans and notifications to the commission by July 1, 2008. That would give manufacturers two months to prepare their recovery plans. The commission is offering *Format for Computer Recycling Notification and Recovery Plan* (see figure) as an example format for an acceptable plan. Similarly, the commission would have from July 1, 2008, until September 1, 2008, to ensure that all recovery plans submitted were in accordance with proposed new §328.137(b). The commission's understanding is that proposed new §328.137(b) comprises the minimum content that a recovery plan has to include. Thus, the commission requests all manufacturers who submit recovery plans to submit them in the example format. (The agency is exploring the use of its current electronic reporting systems to facilitate this requirement.) The commission prefers that any additional details not be in the recovery plan submitted to the TCEQ, but rather be available to the public and the commission through the required Internet link. Manufacturers should submit more detailed plans only if the commission requests that any further details be submitted as a separate attachment.

Figure: 30 TAC Chapter 328--Preamble

Proposed new §328.137(h)(2) includes a statement that would constitute the documentation verifying the collection, recycling, and reuse of computer equipment in a manner that complies with proposed new §328.149.

§328.139, Retailer Responsibilities

The proposed responsibilities are essentially unchanged from the retailer responsibilities listed in the legislation, except for minor reorganization. The legislation seems to make reference to two commission lists that a manufacturer would have to be on before retailers could sell that manufacturer's computer equipment. One list is of computer manufacturers with recovery plans, while the other is a list of computer manufacturers that have notified the commission that they have compliant collection programs. The commission proposes to have one list: manufacturers that have recovery plans and have notified the commission that they have compliant collection programs.

§328.141, Consumer Responsibilities

The commission proposes the same consumer responsibilities as contained in the legislation, except the proposed section would replace the term, "computer equipment that has reached the end of its useful life," with the term, "used computer equipment." This is because computer equipment that has reached the end of its useful life for one consumer may not have reached the end of its useful life for another. The proposed language is an effort to be more consistent with the legislation's intent.

§328.143, Enforcement

Proposed new §328.143 would contain the enforcement provisions of the proposed subchapter, and follows the legislation's section on enforcement verbatim, except for section references that need to be specific to the proposed rule.

§328.145, Financial and Proprietary Information

Proposed new §328.145 follows the legislation's section on financial and proprietary information verbatim.

§328.147, Liability

Proposed new §328.147 follows the legislation's section on liability verbatim.

§328.149, Sound Environmental Management

The commission proposes new §328.149 with one minor difference from the legislation's section on sound environmental management. HB 2714 requires the commission to adopt either the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc. (ISRI), April 25, 2006, or other standards from a comparable nationally recognized organization. The commission proposes to exercise the option to adopt the ISRI standards. In addition, the proposed section includes a provision whereby if the EPA adopts similar standards that were deemed to be an acceptable substitute by the TCEQ's executive director, those EPA standards would be automatically adopted and the ISRI standards would be automatically revoked, with no further rulemaking necessary.

§328.151, Federal Preemption; Expiration

Proposed new §328.151 follows the legislation's section on federal preemption and expiration verbatim.

§328.153, Amount of Penalties

The commission proposes new §328.153 to describe, in a slightly more detailed, specific fashion, the legislation's section on the amount of penalties (Section 2 of HB 2714, 80th Legislature, 2007).

§328.155, Disposition of Penalty

Proposed new §328.155 follows the legislation's section on disposition of penalty (Section 3) verbatim, except for section references that need to be specific to the proposed rules.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules would be in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would establish a program for the collection, recycling, and reuse of used computer equipment.

HB 2714, 80th Legislature, Regular Session, amended Texas Health and Safety Code, Chapter 361 to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment used by an individual primarily for personal or home-business use. The proposed rules would add a subchapter to Chapter 328, to establish

the regulatory framework for such a program. The agency anticipates that it will expend greater effort during the first two years the proposed rules are implemented to educate the public, perform minimal review of required plans from manufacturers, and ensure compliance with program requirements among computer manufacturers and retailers. However, the agency anticipates using available resources to implement the proposed rules.

The proposed rules would require manufacturers to adopt and implement a recovery plan and affix a brand label to computer equipment. A manufacturer's plan must provide a consumer with a method of recycling used computer equipment at no cost to the consumer at the time of recycling. The manufacturer's collection program must be reasonably convenient for consumers to use. The proposed rules would provide several alternatives for meeting the convenience requirements of a recycling program and specify that the manufacturer's website must contain pertinent information for consumers regarding the program. The flexibility of meeting the convenience requirements of the proposed rules will allow manufacturers to establish the most cost-effective means of meeting recycling requirements. Retailers selling computers would not be allowed to sell computer equipment made by any manufacturer that does not implement such a program.

The proposed rules may affect the public works departments, environmental departments, and solid waste services departments of local governments if manufacturers enlist their aid in implementing computer recovery programs. If local governments participate in these programs, the proposed rules are not anticipated to have a significant fiscal impact on them, since manufacturers will be responsible for the recycling programs. The proposed rules may benefit local governments that already have collection and recycling programs for used computer equipment since manufacturers will be tasked with this responsibility and provide relief or assistance to these local government efforts.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules would be in effect, the public benefit anticipated from the changes seen in the proposed rules would be greater protection of public health and safety because of increased collection and recycling of used computer equipment.

Staff estimates that there may be as many as 150 manufacturers and 3,000 retailers affected by the proposed rules. A portion of these manufacturers and retailers may be small businesses, and the fiscal impact of the proposed rules on these entities is discussed in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT section of this fiscal note.

The proposed rules would require manufacturers to establish comprehensive, convenient, and environmentally sound programs for the collection, recycling, and reuse of used computer equipment at no cost to the consumer at the time of recycling. The flexibility of the proposed rules should ensure that there not be any significant fiscal implications for individuals or large businesses that manufacture computer equipment. In addition, the reuse and recycling of used computer equipment is considered to be an economically viable activity, and recycling programs may pay for themselves because of the marketability of materials recovered during the recycling process.

Retailers selling computer equipment would be prohibited from selling computers made by manufacturers that did not comply with the recycling requirements of the proposed rules. The proposed rules would not be expected to have a significant fiscal impact on retailers since the majority of manufacturers are expected to comply with the requirements of the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Staff estimates that there may be as many as 40 Texas small businesses that manufacture computer equipment and 2,300 small retail businesses selling computer equipment that may be affected by the proposed rules. The proposed rules would give flexibility to manufacturers in establishing such programs. This flexibility should ensure minimal fiscal impact to manufacturers and ensure that retailers have an ample supply of computer equipment to sell. In addition, computer recycling programs have been known to be economically viable enterprises and are not expected to increase costs for either manufacturers or retailers.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules would not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules would not adversely affect a local economy in a material way for the first five years that the proposed rules were in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. Furthermore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety. With the caveat that the collection of computer equipment must be reasonably convenient and available to the consumer, the proposed rulemaking affords manufacturers the opportunity to establish recovery programs tailored to their individual needs. The flexibility of the proposed rulemaking will allow manufacturers to develop the most cost-effective means of meeting the recycling requirements. This should prevent the proposed rulemaking from adversely affecting the economy in a material way. The commission concludes that the proposed rulemaking does not meet the definition of a major environmental rule.

In addition to the fact that the proposed rulemaking does not meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it

does not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

First, applicable federal standards for the collection and recycling of computer equipment do not currently exist and Texas HB 2714, Section 4(a), 80th Legislature, 2007, authorizes the commission to adopt any rules required to implement the act. Second, the proposed rulemaking is in direct response to the previously mentioned bill and does not exceed its requirements. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking will be adopted under the authority of Texas HB 2714, Section 4(a), 80th Legislature, 2007, which authorizes the commission to adopt any rules required to implement the act. Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific purpose of the proposed rulemaking is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. These rules establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of used computer equipment based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. Since computers and related display devices are not real property, the proposed regulations do not affect a landowner's right in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to real property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and determined that the proposed rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the proposed rulemaking action is not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on January 14, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, agency staff will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

In addition to comments on the proposed sections, the TCEQ invites any other comments appropriate to the effective implementation of the program consistent with the statute. Written comments may be submitted to Kristin Smith, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/.* File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2007-036-328-AS. Comments must be received no later than February 4, 2008. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact G. Michael Lindner, Small Business and Environmental Assistance, at (512) 239-3045.

STATUTORY AUTHORITY

The new rules are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rules necessary to

carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC. The amended sections are also proposed under Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the THSC, Texas Solid Waste Disposal Act, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste, and THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th legislature, which authorizes the commission to help create a recycling program for used computer equipment.

The proposed amendments implement THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th legislature.

§328.131. Purpose.

(a) The purpose of this subchapter is to:

(1) help establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of used computer equipment; and

(2) establish requirements for persons that manufacture or sell new computer equipment.

(b) The program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

§328.133. Applicability and Effective Date.

(a) The collection, recycling, and reuse provisions of this subchapter:

(1) apply exclusively to computer equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer in this state; and

(2) do not impose any obligation on an owner or operator of a solid waste facility.

(b) This subchapter does not apply to:

(1) a television, any part of a motor vehicle, a personal digital assistant, or a telephone; or

(2) a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement.

(c) This subchapter applies to persons, as defined in §328.135 of this title (relating to Definitions), that:

(1) manufacture computer equipment; or

(2) sell computer equipment; or

(3) purchase computer equipment primarily for personal or home business use.

(d) The effective date of the enforcement provisions of §328.143(d) or (e) of this title (relating to Enforcement) and of the penalty provisions of §328.153 of this title (relating to Amount of Penalties) and §328.155 of this title (relating to Disposition of Penalty) is September 1, 2008.

(e) Computer recycling facilities must be in compliance with:

(1) §330.11(e)(2) of this title (relating to Notification Required);

(2) §335.6 of this title (relating to Notification Requirements); and

(3) Subchapter A of this chapter (relating to Purpose and General Information).

§328.135. Definitions.

The following terms, when used in this subchapter, have the following meanings.

(1) Brand--The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product.

(2) Computer--A high-speed electronic device that processes, retrieves, and stores programmed information.

(3) Computer equipment--A desktop or notebook computer, its accompanying keyboard and mouse, or a computer monitor or other display device that does not contain a tuner.

(4) Consumer--An individual who uses computer equipment that is purchased primarily for personal or home business use.

(5) Manufacturer--A person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold computer equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured computer equipment without affixing a label with a brand;

(D) who manufactures or manufactured computer equipment to which the person affixes or affixed a label with a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States, unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(6) Retailer--A person who owns or operates a business that sells new computer equipment, including sales through a sales outlet, the Internet, or a catalog, whether or not the seller has a physical presence in this state.

(7) Television--Any telecommunication system device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(8) Tuner--An electronic device or circuit used to select signals at a specific frequency for amplification and conversion to pictures or sound.

§328.137. Manufacturer Responsibilities.

(a) Before a manufacturer may offer computer equipment for sale in this state, the manufacturer shall:

(1) adopt and implement a recovery plan; and

(2) affix a permanent, readily visible label to the computer equipment with the manufacturer's brand(s).

(b) The recovery plan must enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and must include provisions for:

(1) the manufacturer's collection from a consumer of any used computer equipment labeled with the manufacturer's brand(s); and

(2) recycling or reuse of computer equipment collected under paragraph (1) of this subsection, including information for the consumer on how and where to return the manufacturer's computer equipment. This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the manufacturer's computer equipment. If the Internet link is going to change, the manufacturer shall notify the commission of what the new Internet link will be 30 days in advance;

(c) The collection of computer equipment provided under the recovery plan must be:

(1) reasonably convenient and available to consumers in this state; and

(2) designed to meet the collection needs of consumers in this state.

(d) Examples of collection methods that alone or combined meet the convenience requirements of this section include:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail;

(2) a system using a physical collection site that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return computer equipment; and

(3) a system using a collection event held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

(e) Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations.

(f) The manufacturer:

(1) shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site, including a list of all of the manufacturer's brands both in use and no longer in use;

(2) shall provide to the commission a recovery plan in accordance with subsection (b) of this section and notification that the manufacturer has, or will have by September 1, 2008, a compliant collection program. In order to be eligible for the September 1, 2008 commission's list of manufacturers that have recovery plans and have notified the commission that they have a compliant collection program, a manufacturer must submit its recovery plan and notification no later than July 1, 2008; and

(3) may include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

(g) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(h) Each manufacturer that has submitted a recovery plan shall submit an annual recycling report to the commission by January 31, 2010, or by January 31 of each year after submitting a recovery plan, that includes:

(1) the weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with §328.149 of this title (relating to Sound Environmental Management) and with §305.128 of this title (relating to Signatories to Reports), except that the certification must state, "I, {name}, certify under penalty of law that all computer equipment collected by {company name} under 30 TAC Chapter 328, Subchapter I, has been recycled or reused in a manner that complies with federal, state, and local law and under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(i) If more than one person is a manufacturer of a certain brand of computer equipment as defined by §328.135 of this title (relating to Definitions), any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

(j) The obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extend to all computer equipment bearing that brand regardless of its date of manufacture.

§328.139. Retailer Responsibilities.

(a) A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in this state unless the equipment is labeled with the manufacturer's brand(s) and the manufacturer is included on the commission's list of manufacturers that have recovery plans and have notified the commission that they have a compliant collection program.

(b) Retailers can go to the commission's Internet site and view all manufacturers that are listed as having recovery plans and having notified the commission that they have a compliant collection program. Computer equipment from manufacturers on that list may be sold in or into the state of Texas.

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter.

§328.141. Consumer Responsibilities.

(a) A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of used computer equipment by visiting the commission's and manufacturers' Internet sites.

§328.143. Enforcement.

(a) The commission may conduct audits and inspections to determine compliance with this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by subsections (d) and (e) of this section, take enforcement action against any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

(c) The attorney general may file suit under Texas Water Code, §7.032, to enjoin an activity related to the sale of computer equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a manufacturer on the manufacturer's first violation of this subchapter. The manufacturer must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by §328.137 of this title (relating to Manufacturer Responsibilities) must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

§328.145. Financial and Proprietary Information.

Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Texas Government Code, Chapter 552.

§328.147. Liability.

(a) A manufacturer or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

§328.149. Sound Environmental Management.

(a) All computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission adopts, as standards for recycling or reuse of computer equipment in this state, the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006. If at any time the EPA adopts standards for recycling or reuse of computer equipment that are determined by the executive director to be an acceptable substitute, by this rule the commission will have automatically adopted those standards and revoked the ISRI standards.

§328.151. Federal Preemption; Expiration.

(a) If federal law establishes a national program for the collection and recycling of computer equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

§328.153. Amount of Penalties.

(a) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or adopt and implement a recovery plan as required by §328.137 of this title (relating to Manufacturer Responsibilities), may not exceed $10,000 for the second violation or $25,000 for each subsequent violation.

(b) The amount of the penalty assessed against a recycling facility for a violation of Subchapter A of this chapter (regarding Purpose and General Information) shall be determined by enforcement protocols established for that subchapter.

(c) Except as provided by subsections (a) and (b) of this section, the amount of the penalty assessed against a manufacturer for any other violation of this subchapter may not exceed $1,000 for the second violation or $2,000 for each subsequent violation.

(d) The amount of the penalty assessed against a retailer for a violation of this subchapter may not exceed $1,000 for the second violation or $2,000 for each subsequent violation.

(e) A penalty under this section is in addition to any other penalty that may be assessed for a violation of this subchapter.

§328.155. Disposition of Penalty.

A penalty collected under §328.153(d) or (e) of this title (relating to Amount of Penalties) shall be paid to the commission and deposited to the credit of the waste management account.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706195
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.7

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.7, concerning Furbearing Animal Licenses and Permits. The proposed amendment would reduce the fee for the nonresident wholesale fur dealer's license from $600 to $250. The department received a petition for rulemaking requesting that the fee for the nonresident wholesale fur dealer's

license be reduced in order to be consistent with similar fees in adjacent states and to attract non-resident fur dealers to Texas, potentially increasing the value of furs in Texas. The department has determined that there is no reason to deny the petitioner's request.

Robert Macdonald, Regulations Coordinator, has determined that for each year of the first five years the rule as proposed is in effect, there will be fiscal implications to the department as a result of enforcing or administering the rule. From Fiscal Year (FY) 2003 through FY 2005, the department sold no nonresident wholesale fur dealer's licenses. In Fiscal Year 2007, the department sold four nonresident wholesale fur dealer's licenses. Assuming that current sales volume is sustained, the department will incur a revenue reduction of $1,400 by reducing the fee for the nonresident wholesale fur dealer's license; however, if the proposed amendment results in the sale of additional nonresident wholesale fur dealer's licenses, the revenue reduction will be smaller. There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the potential increase in income realized by fur trappers in Texas.

The department estimates that small or micro-businesses might be directly affected by the proposed rule. By reducing the fee for nonresident wholesale fur dealers, the proposed rule could have the potential effect of increasing competition for holders of the resident wholesale fur dealer's license. There were eight resident wholesale fur dealer's licenses and four nonresident wholesale fur dealer's license sold last year. Fur harvest and fur prices are highly variable. Fur dealer purchase activity is not equally distributed in volume or by species; thus, there is no way to calculate the actual economic impact of the fee decrease on resident wholesale fur dealers. Moreover, since it is lawful for fur trappers to sell pelts to out-of-state buyers (who are not required to purchase a dealer's permit unless they physically conduct business in Texas), there is no captive market for pelts in Texas that is exclusively available to Texas-licensed dealers. Thus, the proposed fee reduction may not affect the current market, since trappers will still have the option of selling to non-Texas-licensed fur buyers.

The department also considers the interests of licensed trappers. There were 2,749 trappers licenses sold in Texas in FY 2007. Under the current rules, if a trapper is to sell a pelt in-state, the pelt can be sold only to a licensed wholesale fur dealer; however, pelts may be sold directly to unlicensed buyers out of state. Thus, the proposed fee reduction would have a neutral or positive impact on trappers, who will still be able to sell out-of-state if the in-state prices offered by non-resident wholesale dealers are unsatisfactory.

The department considered several regulatory alternatives to minimize the rule's impact on small businesses, including leaving the fee as it is, eliminating the fees for both residents and nonresidents, and eliminating the wholesale fur buyer's license entirely. The purpose of the rule is to make it less expensive for nonresidents to acquire a wholesale fur dealer license. Thus, leaving the fee as it is would not serve the purpose of the rule. Eliminating the fees for the resident and nonresident wholesale fur buyer's licenses was rejected because the lost revenue would have to be recovered from existing programs and services. Elimination of the wholesale fur dealer's license was rejected because the department captures harvest and sales data from reports submitted by wholesale fur dealer license holders. Eliminating the wholesale fur dealer license would force the department to require trappers to submit reports, which, due to the significantly larger number of trappers, would impose additional expenses to both the department and the regulated community to collect, analyze, and maintain.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed amendment may be submitted to John Young, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 912-7047 (e-mail: john.young@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, and to provide for permit application forms, fees, procedures, and reports.

The proposed amendment affects Parks and Wildlife Code, Chapter 71.

§53.7. Furbearing Animal Licenses and Permits.

(a) - (d) (No change.)

(e) nonresident wholesale fur dealer's--$250 [~~$600~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706237
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 389-4775

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31 TAC §53.17

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.17, concerning Miscellaneous Fees.

Section 41 of House Bill 12, enacted by the 80th Texas Legislature, amended the Texas Parks and Wildlife Code by adding new Subchapter V to Chapter 43. The provisions of House Bill 12 require the commission by rule to establish permits to allow the

possession or transport of live nonindigenous venomous snakes and five named species of constrictors for commercial and recreational purposes, and authorize the commission to adopt rules to implement the new subchapter, including rules governing fees.

The proposed amendment would establish a fee of $20 for a recreational exotic snake permit and a fee of $60 for a commercial exotic snake permit.

A separate rulemaking proposal published elsewhere in this issue of the *Texas Register* would create the recreational exotic snake permit and the commercial exotic snake permit and set forth the requirements for possession, use, and display of the permits.

Major David Sinclair, Chief of Wildlife Enforcement, has determined that for each year of the first five years the rule as proposed is in effect, there will be fiscal implications to the department as a result of enforcing or administering the rule.

The controlled exotic snake permits are required by House Bill 12. The department intends that the cost of administering and enforcing the controlled exotic snake program be offset by revenue from fees for the recreational controlled exotic snake permit and the commercial controlled exotic snake permit.

The department is aware of no authoritative source or method for determining the number of persons in possession of controlled exotic snakes in Texas, the number of controlled exotic snakes in Texas, or the number of controlled exotic snakes bought and sold in the state.

Owing to the lack of available data on the number of persons in Texas who might be in possession of a controlled exotic snake for recreational purposes, the department is unable to determine the precise number of people who would be required to obtain a recreational exotic snake permit. For purposes of this analysis, the department assumes that a maximum of 10,000 persons in Texas possess a controlled exotic snake for recreational purposes. To obtain this value, the department used survey data contained in the 2001 American Veterinary Medical Association Pet Ownership and Demographics Sourcebook (AVMA). The AVMA estimates that in 2001, the last year for which data is available, that 616,000 snakes of all types were kept in approximately 315,000 households in the United States. According to the U.S. Census Bureau, there were approximately 105,480,101 households in the United States, which means that snakes were kept as pets in 0.3% of the households in the United States. U.S. Census Bureau data indicate that there were 7,393,354 households in the state of Texas in 2000. Multiplying this value (the number of Texas households) by the percentage of households where snakes were kept as pets (0.3%) yields a total of 22,180 snake-holding households in Texas. There are many species of snakes imported, bred, sold, and kept as pets in Texas. Based on anecdotal information, the department concludes that the four species of large constrictors affected by the rule constitute less than half of all snakes kept as pets and that venomous exotic snakes constitute an even smaller percentage. For purposes of this analysis, the department estimates that half of the 22,180 snake-holding households in the state have a controlled exotic snake.

The trade in controlled exotic snakes consists of two components: retail outlets such as pet stores, and individual dealers. The most recent economic census conducted by the United States Census Bureau (2002) indicates that there are 431 pet and pet supply stores in Texas. According to the 2006-2007 Pet Age Retailer Report, which is a survey of approximately 23,000 pet retailers and other allied services and products, 31% of the pet retailers in the United States reported sales activities involving reptiles. The department considers that it is reasonable to assume that the nationwide relationship of the total number of pet stores to the percentage of pet stores that sell reptiles is roughly the same at the state level; however, to be certain that this analysis does not underrepresent affected small and micro businesses or individuals required to comply with the proposed rule, the department assumes that half of all pet stores (215) are involved in the sale of one or more species of controlled exotic snakes.

The department is unable to determine the number of individual dealers who may be engaged in commercial activities involving controlled exotic snakes. Anecdotal evidence and personal communications suggest that the number of persons engaged in commercial activities involving controlled exotic snakes could be in the 100 - 500 range, but may be higher. Therefore, to be certain that this analysis does not underrepresent the number of individuals (many of whom may qualify as small or micro businesses) required to comply with the proposed rule, the department assumes that 1,000 individual dealers are involved in the sale of one or more species of controlled exotic snakes in Texas. Therefore, the department estimates that 1,215 persons or entities (215 pet stores; 1,000 commercial dealers) are engaged in the commercial sale of one or more controlled exotic snakes in Texas.

Based on the assumption that a maximum of 11,090 people will be required to purchase a recreational controlled exotic snake permit ($20), and a maximum of 1,215 people will be required to purchase a commercial exotic snake permit ($60), the potential maximum revenue to the department would be $294,700 per year ($221,800 from recreational permit sales and $72,900 from the sale of commercial permit sales).

The department estimates that it will incur an annual cost of $276,000 to administer and enforce the controlled exotic snake program. This estimate was derived by determining the number of game wardens necessary for statewide enforcement activities (four), the cost to the department of selling the permits, and miscellaneous costs.

Although the program will be enforced by all game wardens, a determination of the number of full-time equivalent employees necessary to enforce the rule is an effective way of estimating the labor cost of enforcement. The average annual salary for a field game warden is $51,828, which means that the department will sustain a salary cost of $207,312 for enforcement activities (four wardens at $51,828 per warden). The department estimates an additional minimum cost of $50,000 - $60,000 per year related to statewide enforcement and public information efforts (training of city and county peace officers, printing costs for brochures for public education, recordkeeping, etc.) and other miscellaneous costs such as fuel.

Additionally, the department will incur costs as a result of selling the permits via the department's point-of-sale license system. The department is contractually obligated to pay $.75 per transaction to the license system provider and a five per cent commission to the license vendor. If the department sells 11,090 recreational exotic snake permits and 1,215 commercial exotic snake permits, the total cost to the department would be $23,963.

Based on these assumptions and estimates, the department estimates a fiscal impact that is revenue neutral or very slightly revenue positive.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rule.

Major Sinclair also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the enhanced health and safety of the public.

The rule will result in adverse economic costs to businesses, micro businesses, and persons required to comply with the rule, namely, the fees for the recreational controlled exotic snake permit and the commercial controlled exotic snake permit, and recordkeeping costs associated with requirements for the commercial controlled exotic snake permit. Although the proposed rule would require the purchase of permits for specific fee amounts, the provisions of House Bill 12 require the department to establish the permits. The department must impose fees sufficient to recoup the expenses of administering and enforcing the permit program in order to avoid negative impacts to existing programs and program enforcement.

The proposed amendment would establish a fee of $20 for the recreational controlled exotic snake permit. The recreational controlled exotic snake permit requirement would not affect small or micro businesses; thus, the adverse economic costs to persons required to comply with the rule would be $20.

The proposed amendment also would establish a fee of $60 for the commercial controlled exotic snake permit, the only permit that would affect small or micro businesses. As a result of the analysis described earlier in this preamble, the department estimates that a maximum of 1,215 small and micro businesses will be affected by the proposed rule. The direct economic impact of the rule on these businesses is expected to be $60 per year per permanent place of business. The objective of the proposed rule is to comply with the provisions of House Bill 12, which require the department to issue permits authorizing the commercial and recreational possession and transport of controlled exotic snakes. In conducting the regulatory flexibility analysis required by Government Code, §2006.002, the department determined that alternative methods of complying with the requirements of House Bill 12 would be for the department to establish fees at values below what is needed to recoup the cost of administering and enforcing the rule or to eliminate fees for the required permits. Either of the alternatives (reducing or eliminating the fees for the required permits) would mean that the implementation of the requirements of House Bill 12 would occur at a net cost to the department, which would have to be offset by reductions in current department programs and services.

The department has determined that there will be a recordkeeping cost to entities qualifying as small or micro businesses. The proposed permit rules would require the holder of a commercial controlled exotic snake permit to maintain a daily record of all activities involving the possession or sale of controlled exotic snakes and to retain those records for two years. The department estimates the cost of the recordkeeping at less than $50 per year per permittee for the cost of recordkeeping materials. No additional actions are required other than recording the identities (and permit number, if required) of persons from whom controlled exotic snakes are obtained or to whom controlled exotic snakes are sold. The department considered several regulatory alternatives to the recordkeeping requirements, including having no recordkeeping requirements and having monthly reports. The department rejected the idea of having no recordkeeping requirements because House Bill 12 requires an interim legislative study of controlled exotic snakes and accurate records are necessary for providing information to the legislature, as well as for successful law enforcement investigations. The idea of monthly reports was rejected as being a difficult and expensive method for small businesses to implement, and for being expensive and time-consuming for the department to administer. The department also must report to a legislative inter

Another alternative would have been for the department to not adopt rules governing controlled exotic snakes. This would have been inconsistent with the legislative mandate, expressed in House Bill 12, requiring adoption of such rules for the protection of the public health, safety, and welfare.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed amendment may be submitted to Major David Sinclair, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4854 (e-mail: david.sinclair@tpwd.state.tx.us).

The amendment is proposed under the provisions of House Bill 12, §41, enacted by the 80th Texas Legislature, which added new Subchapter V to Parks and Wildlife Code, Chapter 43, authorizing the commission to adopt rules to implement the subchapter, including rules governing the possession or transport of a snake covered by this subchapter; permit application forms, fees, and procedures; the release of snakes; reports that the department may require a permit holder to submit to the department; and other matters the commission considers necessary.

The amendment affects Parks and Wildlife Code, Chapter 43, Subchapter V.

§53.17. Miscellaneous Fees.

(a) Off-highway vehicle decal--$8; and [.]

(b) Controlled exotic snake permits:

(1) recreational--$20;

(2) commercial--$60.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706238
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 389-4775

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CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER J. CONTROLLED EXOTIC SNAKES

31 TAC §§55.651 - 55.657

The Texas Parks and Wildlife Department (the department) proposes new §§55.651 - 55.657, concerning Controlled Exotic Snakes.

Section 41 of House Bill 12, enacted by the 80th Texas Legislature, amended the Texas Parks and Wildlife Code by adding new Subchapter V to Chapter 43. The provisions of House Bill 12 require the commission by rule to establish permits to govern the possession or transport of live nonindigenous venomous snakes and five named species of constrictors for commercial and recreational purposes.

Proposed new §55.651, concerning Definitions, would establish the meanings of various words and terms used in the subchapter.

Proposed new §55.651(1) would create a definition for "commercial possession." House Bill 12 requires the department to establish both recreational and commercial permits. The rules as proposed would prohibit the sale of a controlled exotic snake by any person other than the holder of a commercial controlled exotic snake permit. By defining "commercial possession" as "the possession of a controlled exotic snake for a commercial purpose," the rules could be enforced without proof of an actual sale.

Proposed new §55.651(2) would create a definition for "controlled exotic snake." Although the snakes affected by the rules are specifically identified by statute, it is awkward to refer to "venomous nonindigenous snakes and five species of constrictors" throughout the rules. Therefore, the department has created a collective term, "controlled exotic snake," for the sake of convenience. The proposed definition would also include all hybrids of the listed species.

Proposed new §55.651(3) would define "possession" as "actual care, custody, or control," which is taken from the definition provided by Texas Penal Code, §1.07. The definition is necessary to establish an unambiguous term for purposes of compliance and enforcement.

Proposed new §55.651(4) would define "recreational possession" as possession for any purpose other than sale. House Bill 12 requires the department to establish both recreational and commercial permits. The rules as proposed would prohibit the sale of a controlled exotic snake by any person other than the holder of a commercial controlled exotic snake permit. Thus, any purpose or intent other than sale is considered to be a recreational purpose.

Proposed new §55.651(5) would define "sale" as the "transfer of ownership or the right of possession or the offer to transfer ownership or the right of possession of a controlled exotic snake to a person for a monetary consideration." A precise definition for "sale" is necessary to unambiguously identify the characteristics of an activity (sale) for which a specific permit is required.

Proposed new §55.652, concerning Permit Required, would: require a person who possesses a controlled exotic snake to possess a recreational controlled exotic snake permit; require a person who sells a controlled exotic snake to possess a commercial controlled exotic snake permit; clarify that possession of a permit does not relieve any person from the obligation to comply with other applicable federal, state, or local law; and cite a reference to the statutory list of persons exempted from the rules. House Bill 12 requires the department to create both a commercial and a recreational permit; however, there is no statutory guidance as to the specific activities that constitute commercial or recreational use; thus, those activities must be established by rule. The proposed new section is necessary to describe and identify the activities for which a commercial controlled exotic snake permit is required.

Proposed new §55.653, concerning Permit Issuance and Period of Validity, would require the payment of a fee for the issuance of a controlled exotic snake permit, establish a one-year period of validity for each type of permit, provide for a receipt or bill of sale to function as a temporary recreational controlled exotic snake permit for a period of 21 days from the date indicated on the receipt or bill of sale, and include the statutory provision that a person convicted of a violation of the subchapter may not obtain a permit before the fifth anniversary of the date of the conviction. Since the department must recoup the expense of administering the program, a fee is necessary and must be established by rule. A separate rulemaking proposal published elsewhere in this issue of the *Texas Register* would implement the fees for the recreational exotic snake permit and the commercial exotic snake permit. The proposed period of validity of one year was selected because most permits and licenses sold or issued by the department are one-year permits synchronized with the state fiscal year, which allows internal accounting and auditing processes to accurately capture license and permit data on an annualized basis. The provision for the use of a receipt or bill of sale as a temporary recreational controlled exotic snake permit is necessary because the department does not wish to inconvenience the public by requiring the possession of a department-issued permit prior to the purchase of a controlled exotic snake for recreational purposes. Allowing the use of a bill of sale or receipt as a temporary recreational controlled exotic snake permit will allow people to legally possess a controlled exotic snake for recreational purposes for a limited period of time until they can purchase a department-issued permit.

Proposed new §55.654, concerning Possession of Commercial Permit, would establish the requirements for the possession and display of a commercial controlled exotic snake permit. Proposed new §55.654(a) would require a commercial controlled exotic snake permit to be purchased for each permanent place of business where controlled exotic snakes are bought, sold, or possessed for sale. The proposed new subsection is necessary because the department by policy has always issued permits to named individuals to facilitate enforcement. The department understands that a single company may operate a business in several locations, and that requiring each employee to possess a permit would be burdensome. Therefore, the department reasons that requiring a permit for each place of business would provide a method for easily determining if activities at a given location are lawful without imposing an unreasonable burden on businesses.

Proposed new §55.654(b) would authorize an employee of a commercial controlled exotic snake permit holder to buy and sell controlled exotic snakes under the authority of that permit only at a permanent place of business operated by the permittee, provided that the employer's permit or a legible photocopy of the permit is maintained at the place of business during all activities governed by this subchapter. The provision is necessary to allow an employee without a permit to engage in regulated activities at a named location, thus allowing businesses to avoid the expense of having to purchase a commercial controlled ex-

otic snake permit for every employee who engages in the sale of controlled exotic snake as a work duty.

Proposed new §55.654(c) would allow a commercial controlled exotic snake permit holder to buy and sell controlled exotic snakes at a place other than a permanent place of business, provided that the person also possesses on their person the original or a legible photocopy of a valid commercial controlled exotic snake permit. The proposed new subsection is necessary to allow for a permit holder to engage in buying and selling on a mobile basis.

Proposed new §55.655, concerning Recordkeeping, would require the holder of a commercial controlled exotic snake permit to maintain a daily record of all purchases, sales, and transfers of controlled exotic snakes. The daily record would consist of the name, address, and, if applicable, permit number of all persons from whom controlled exotic snakes are obtained or to whom controlled exotic snakes are sold. The permittee also would be required to retain such records for a period of two years and to make them available at the request of any department employee acting within the scope of official duties. The two-year record retention period was selected because that is the statute of limitations for a Class C misdemeanor, which is the statutory penalty for violations of the subchapter. The new section is necessary to enable the department to track the purchase and sales activity of persons in the event that an investigation of a commercial controlled exotic snake permit holder is necessary.

Proposed new §55.656, concerning Inspection; Seizure, would duplicate the provisions of House Bill 12 that establish the department's inspection authority with respect to enforcing the subchapter, and the provisions applicable to the seizure and removal of unlawfully possessed controlled exotic snakes. The provisions are repeated verbatim from Parks and Wildlife Code, §§43.852 - 43.854, as amended by House Bill 12. Proposed subsection (a) provides that an authorized department employee may inspect at any time and without a warrant a permit or any records required by this subchapter. Proposed subsection (b) authorizes the department to arrange for the seizure and removal of a controlled exotic snake from a person who possesses the snake without the required permit. The person is responsible for any costs incurred by the department in the seizure, removal, and disposition of the snake. The proposed subsection also stipulates that no department employee is required to handle, remove, or dispose of the snake and authorizes the department to contract with a person who has knowledge of or expertise in the handling of a snake covered by this subchapter to assist the department in the handling, removal, and disposition of the snake.

Proposed new §55.657, concerning Violations and Penalties, adopts the statutory language regarding violations for the intentional release of a controlled exotic snake, prescribes the penalty for a violation of the subchapter, and creates a defense to prosecution. Under the terms of House Bill 12, a violation of Parks and Wildlife Code, Chapter 43, Subchapter V, or a rule adopted by the commission under authority of Chapter 43, Subchapter V is a Class C misdemeanor, except for the intentional release of a controlled exotic snake, which is a Class A misdemeanor. The proposed new section would also provide that it is a defense to prosecution that a person charged with being unable to present an appropriate permit produces in court an appropriate permit issued to the person and valid at the time the offense was committed. The rule is necessary because it is conceivable that there could be an instance in which a person who is licensed to possess a controlled exotic snake might not be in physical possession of the permit.

Major David Sinclair, Chief of Wildlife Enforcement, has determined that for each year of the first five years the rules as proposed are in effect, there will be fiscal implications to the department as a result of enforcing or administering the rules.

The proposed rules are required by House Bill 12. The department intends that the cost of administering and enforcing the controlled exotic snake program be offset by revenue from fees for the recreational controlled exotic snake permit and the commercial controlled exotic snake permit. Elsewhere in this issue of the *Texas Register*, the department is proposing the rule that would establish the fees for these permits. Although the fees are established by a separate rulemaking, an analysis of the economic impact is included in this preamble to ensure a comprehensive analysis.

The department is aware of no authoritative source or method for determining the number of persons in possession of controlled exotic snakes in Texas, the number of controlled exotic snakes in Texas, or the number of controlled exotic snakes bought and sold in the state.

Owing to the lack of available data on the number of persons in Texas who might be in possession of a controlled exotic snake for recreational purposes, the department is unable to determine the precise number of people who would be required to obtain a recreational exotic snake permit. For purposes of this analysis, the department assumes that a maximum of 10,000 persons in Texas possess a controlled exotic snake for recreational purposes. To obtain this value, the department used survey data contained in the 2001 American Veterinary Medical Association Pet Ownership and Demographics Sourcebook (AVMA). The AVMA estimates that in 2001, the last year for which data is available, that 616,000 snakes of all types were kept in approximately 315,000 households in the United States. According to the U.S. Census Bureau, there were approximately 105,480,101 households in the United States, which means that snakes were kept as pets in 0.3% of the households in the United States. U.S. Census Bureau data indicate that there were 7,393,354 households in the state of Texas in 2000. Multiplying this value (the number of Texas households) by the percentage of households where snakes were kept as pets (0.3%) yields a total of 22,180 snake-holding households in Texas. There are many species of snakes imported, bred, sold, and kept as pets in Texas. Based on anecdotal information, the department concludes that the four species of large constrictors affected by the rule constitute less than half of all snakes kept as pets and that venomous exotic snakes constitute an even smaller percentage. For purposes of this analysis, the department estimates that half of the 22,180 snake-holding households in the state have a controlled exotic snake.

The trade in controlled exotic snakes consists of two components: retail outlets such as pet stores, and individual dealers. The most recent economic census conducted by the United States Census Bureau (2002) indicates that there are 431 pet and pet supply stores in Texas. According to the 2006-2007 Pet Age Retailer Report, which is a survey of approximately 23,000 pet retailers and other allied services and products, 31% of the pet retailers in the United States reported sales activities involving reptiles. The department considers that it is reasonable to assume that the nationwide relationship of the total number of pet stores to the percentage of pet stores that sell reptiles is roughly the same at the state level; however, to

be certain that this analysis does not underrepresent affected small and micro businesses or individuals required to comply with the proposed rules, the department assumes that half of all pet stores (215) are involved in the sale of one or more species of controlled exotic snakes.

The department is unable to determine the number of individual dealers who may be engaged in commercial activities involving controlled exotic snakes. Anecdotal evidence and personal communications suggest that the number of persons engaged in commercial activities involving controlled exotic snakes could be in the 100 - 500 range, but may be higher. Therefore, to be certain that this analysis does not underrepresent the number of individuals (many of whom may qualify as small or micro businesses) required to comply with the proposed rules, the department assumes that 1,000 individual dealers are involved in the sale of one or more species of controlled exotic snakes in Texas. Therefore, the department estimates that 1,215 persons or entities (215 pet stores; 1,000 commercial dealers) are engaged in the commercial sale of one or more controlled exotic snakes in Texas.

Based on the assumption that a maximum of 11,090 people will be required to purchase a recreational controlled exotic snake permit ($20), and a maximum of 1,215 people will be required to purchase a commercial exotic snake permit ($60), the potential maximum revenue to the department would be $294,700 per year ($221,800 from recreational permit sales and $72,900 from the sale of commercial permit sales).

The department estimates that it will incur an annual cost of $276,000 to administer and enforce the controlled exotic snake program. This estimate was derived by determining the number of game wardens necessary for statewide enforcement activities (four), the cost to the department of selling the permits, and miscellaneous costs.

Although the program will be enforced by all game wardens, a determination of the number of full-time equivalent employees necessary to enforce the rules is an effective way of estimating the labor cost of enforcement. The average annual salary for a field game warden is $51,828, which means that the department will sustain a salary cost of $207,312 for enforcement activities (four wardens at $51,828 per warden). The department estimates an additional minimum cost of $50,000 - $60,000 per year related to statewide enforcement and public information efforts (training of city and county peace officers, printing costs for brochures for public education, recordkeeping, etc.) and other miscellaneous costs such as fuel.

Additionally, the department will incur costs as a result of selling the permits via the department's point-of-sale license system. The department is contractually obligated to pay $.75 per transaction to the license system provider and a five per cent commission to the license vendor. If the department sells 11,090 recreational exotic snake permits and 1,215 commercial exotic snake permits, the total cost to the department would be $23,963.

Based on these assumptions and estimates, the department estimates a fiscal impact that is revenue neutral or very slightly revenue positive.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rules.

Major Sinclair also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the enhanced health and safety of the public.

The rules will result in adverse economic costs to businesses, micro businesses, and persons required to comply with the rule, namely, the fees for the recreational controlled exotic snake permit and the commercial controlled exotic snake permit. Although the proposed rule would require the purchase of permits for specific fee amounts, the provisions of House Bill 12 require the department to establish the permits. The department must impose fees sufficient to recoup the expenses of administering and enforcing the permit program in order to avoid negative impacts to existing programs and program enforcement.

The proposed amendment to Chapter 53 of this title (relating to Finance) would establish a fee of $20 for the recreational controlled exotic snake permit. The recreational controlled exotic snake permit requirement would not affect small or micro businesses; thus, the adverse economic costs to persons required to comply with the rules would be $20.

The proposed amendment to Chapter 53 also would establish a fee of $60 for the commercial controlled exotic snake permit, the only permit that would affect small or micro businesses. As a result of the analysis described earlier in this preamble, the department estimates that a maximum of 1,215 small and micro businesses will be affected by the proposed rules. The direct economic impact of the rule on these businesses is expected to be $60 per year per permanent place of business. The objective of the proposed rules is to comply with the provisions of House Bill 12, which require the department to issue permits authorizing the commercial and recreational possession and transport of controlled exotic snakes. In conducting the regulatory flexibility analysis required by Government Code, §2006.002, the department determined that alternative methods of complying with the requirements of House Bill 12 would be for the department to establish fees at values below what is needed to recoup the cost of administering and enforcing the rules or to eliminate fees for the required permits. Either of the alternatives (reducing or eliminating the fees for the required permits) would mean that the implementation of the requirements of House Bill 12 would occur at a net cost to the department, which would have to be offset by reductions in current department programs and services.

The department has determined that there will be a recordkeeping cost to entities qualifying as small or micro businesses. The proposed rules would require the holder of a commercial controlled exotic snake permit to maintain a daily record of all activities involving the possession or sale of controlled exotic snakes and to retain those records for two years. The department estimates the cost of the recordkeeping at less than $50 per year per permittee for the cost of recordkeeping materials. No additional actions are required other than recording the identities (and permit number, if required) of persons from whom controlled exotic snakes are obtained or to whom controlled exotic snakes are sold. The department considered several regulatory alternatives to the recordkeeping requirements, including having no recordkeeping requirements and having monthly reports. The department rejected the idea of having no recordkeeping requirements because House Bill 12 requires an interim legislative study of controlled exotic snakes and accurate records are necessary for providing information to the legislature, as well as for successful law enforcement investigations. The idea of monthly reports was rejected as being a difficult and expensive method for small businesses to implement, and for being expensive and time-con-

suming for the department to administer. The department also must report to a legislative inter

Another alternative would have been for the department to not adopt rules governing controlled exotic snakes. This would have been inconsistent with the legislative mandate, expressed in House Bill 12, requiring adoption of such rules for the protection of the public health, safety, and welfare.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Major David Sinclair, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4854 (e-mail: david.sinclair@tpwd.state.tx.us).

The new sections are proposed under the provisions of House Bill 12, §41, enacted by the 80th Texas Legislature, which added new Subchapter V to Parks and Wildlife Code, Chapter 43. Section 43.851 requires the commission to adopt rules regarding permitting of controlled exotic snakes and to establish separate rules for commercial and recreational activity regarding exotic snakes. Section 43.855 authorizes the commission to adopt rules to implement the subchapter, including rules governing the possession or transport of a snake covered by this subchapter; permit application forms, fees, and procedures; the release of snakes; reports that the department may require a permit holder to submit to the department; and other matters the commission considers necessary.

The new sections affect Parks and Wildlife Code, Chapter 43, Subchapter V.

§55.651. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commercial possession--The possession of a controlled exotic snake for the purpose of sale.

(2) Controlled exotic snake--Any live snake that is:

(A) a venomous snake not indigenous to Texas;

(B) any of the following:

(i) African rock python (Python sebae);

(ii) Asiatic rock python (Python molurus);

(iii) green anaconda (Eunectes murinus);

(iv) reticulated python (Python reticulatus);

(v) southern African python (Python natalensis); or

(C) a hybrid of any species listed in this paragraph.

(3) Possession--Actual care, custody, or control.

(4) Recreational possession--The possession or transportation of a controlled exotic snake for any purpose other than sale.

(5) Sale--The transfer of ownership or the right of possession or the offer to transfer ownership or the right of possession of a controlled exotic snake to a person for a monetary consideration.

§55.652. Permit Required.

(a) Except as provided by Parks and Wildlife Code, §43.851(c), it is an offense for any person in this state to:

(1) possess a controlled exotic snake for any purpose other than sale unless that person possesses a valid recreational controlled exotic snake permit issued by the department; or

(2) sell or possess for commercial purposes a controlled exotic snake unless that person possesses a valid commercial controlled exotic snake permit issued by the department.

(b) A permit issued under this subchapter does not relieve any person of the responsibility of complying with any federal, state, or local law or ordinance regulating the possession and transportation of controlled exotic snakes.

§55.653. Permit Issuance and Period of Validity.

(a) A person may obtain a permit under this subchapter by paying the fee specified in Chapter 53, Subchapter A of this title (relating to Fees).

(b) A permit issued under this subchapter is valid from September 1 of one year until August 31 of the following year.

(c) A person who sells a controlled exotic snake or snakes to another person for purposes of recreational possession shall inform the purchaser at the time of the sale that:

(1) the sales receipt for the transaction is a temporary recreational controlled exotic snake permit valid for 21 days from the date indicated on the receipt; and

(2) after the 21st day following the date indicated on the sales receipt, the possession or transport of the controlled exotic snake or snakes is unlawful unless the person has purchased a recreational controlled exotic snake permit issued by the department.

(d) A person convicted of a violation of this subchapter may not obtain a permit before the fifth anniversary of the date of the conviction.

§55.654. Possession of Commercial Permit.

(a) A commercial controlled exotic snake permit is required for each permanent place of business where controlled exotic snakes are sold or held in commercial possession.

(b) An employee of a commercial controlled exotic snake permit holder may buy and sell controlled exotic snakes under the authority of that permit only at a permanent place of business operated by the permittee, provided that the employer's permit or a legible photocopy of the permit is maintained at the place of business during all activities governed by this subchapter.

(c) In the event that the holder of a commercial controlled exotic snake permit conducts an activity regulated under this subchapter at a place other than the permittee's permanent place of business, that person shall possess on their person the original or a legible photocopy of a valid commercial controlled exotic snake permit.

§55.655. Recordkeeping.

(a) The holder of a commercial controlled exotic snake permit shall maintain a current and legible daily record of all activities involving the acceptance, possession, or transfer of controlled exotic snakes by the permittee, including the name and address of any person:

(1) to whom a controlled exotic snake is sold;

(2) from whom a controlled exotic snake is bought; or

(3) from whom a controlled exotic snake is obtained; and

(4) the person's controlled exotic snake permit number, if the person is required to possess a controlled exotic snake permit.

(b) The records required by this section shall be:

(1) retained by the permittee for a period of two years; and

(2) be made available for inspection upon the request of any department employee acting within the scope of official duties.

§55.656. Inspection; Seizure.

(a) Inspection. An authorized department employee may inspect at any time and without a warrant a permit or any records required by this subchapter.

(b) Seizure.

(1) The department may arrange for the seizure and removal of a snake covered by this subchapter from a person who possesses the snake without the required permit. The person is responsible for any costs incurred by the department in the seizure, removal, and disposition of the snake.

(2) A department employee is not required to handle, remove, or dispose of the snake.

(3) The department may contract with a person who has knowledge of or expertise in the handling of a snake covered by this subchapter to assist the department in the handling, removal, and disposition of the snake.

(4) The department, including an enforcement officer of the department, who acts under this section is not liable in a civil action for the seizure, sale, donation, or other disposition of the snake.

§55.657. Violations and Penalties.

(a) A person may not intentionally, knowingly, recklessly, or with criminal negligence release or allow the release from captivity of a snake covered by this subchapter.

(b) A person who violates any provision of the subchapter is subject to the penalties prescribed by Parks and Wildlife Code, §43.856.

(c) It is a defense to prosecution under §55.652 of this title (relating to Permit Required) that the person charged produces in court an appropriate permit issued to the person and valid when the offense was committed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES

SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §57.251, §57.252

The Texas Parks and Wildlife Department (the department) proposes amendments to §57.251 and §57.252, concerning Introduction of Fish, Shellfish and Aquatic Plants.

Parks and Wildlife Code, §12.015, requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. Under Parks and Wildlife Code, §66.015, the department is required to adopt rules governing the issuance of permits for the introduction of fish, shellfish, and aquatic plants into public waters. Additionally, Agriculture Code, Chapter 134, requires the department to adopt rules to carry out its duties under that chapter.

The department's statutory responsibility is to protect the health and viability of native populations of fish, shellfish, and aquatic life in state waters, including endangered species. Although offshore aquaculture is being practiced elsewhere in the world, it is in its infancy in the United States in general and the Gulf of Mexico in particular. At the present time, there are no offshore aquaculture operations permitted or in the process of being permitted by the department.

In November of 2006, the Texas Parks and Wildlife Commission adopted rules to govern offshore aquaculture activities in Texas waters. As adopted, the rules created a definition for "outside waters." Although the adoption preamble noted that the definition was necessary to "identify the broad geographical area in which offshore aquaculture operations are lawful," the rule text did not reflect the commission's intent to restrict offshore aquaculture to outside waters. Additionally, the department is concerned that the use of the term "outside waters" is potentially confusing, since the same term is used in the department's regulations governing the shrimp fishery. Therefore, the proposed amendment to §57.251 would replace the term "outside waters" with the term "offshore aquaculture zone" (OAZ) and simplify the definition for clarity's sake.

The proposed amendment to §57.252 would clarify that the department will not issue an offshore aquaculture permit for a facility that is not located in the offshore aquaculture zone, and would remove the stipulation that offshore aquaculture activities be confined to Outer Continental Shelf Blocks. Current §57.252(d)(1) states that aquaculture permits will authorize activities in specific Outer Continental Shelf Blocks (OCSB). In developing the original rule, the department had been under the impression that the OCSB grid system also applied to state waters, which it does not. The block system is carried into state waters but it does not carry the same naming convention. Therefore, the proposed amendment would remove the reference to OCSBs and simply restrict permitted activities to the offshore aquaculture zone, which would be defined by the amendment to §57.251 as discussed previously in this preamble.

The department's intent in restricting prospective offshore aquaculture operations to the OAZ is to minimize risk exposure to sensitive bay, river, and inshore ecosystems from potential negative impacts of aquaculture operations offshore.

There is scientific concern over a number of issues raised by aquaculture operations, such as genetic dilution of wild stocks; invasive species vectors; epidemiological and disease issues; impacts of escapement by species that could cause significant environmental harm; habitat destruction; and water diversions

that could disrupt aquatic ecosystems, water quality, habitat, and species diversity.

Aquaculture operations are by necessity energy-intensive animal feeding areas. These areas can produce large, concentrated amounts of wastes underneath and around fish cages, and plumes can be transported by wind, tides, currents, and boat traffic. Similarly, the chemicals and antibiotics used in fish farming could have effects when discharged directly into open waters, and fish contamination could occur from consumption of fish meal.

The ecology of Texas' inshore hydrology is characterized by shallow water depth, slow water exchange, and seasonal freshwater inflows. This area of the state is important nursery habitat for estuarine fisheries, a major source of organic biomass for coastal food webs, a critical factor in stabilizing coastal erosion and sedimentation, and the arena in which many major nutrient cycling and water quality processes occur. Therefore, the department seeks to restrict aquaculture operations to the open waters of the Gulf of Mexico until such time as the ecological impacts can be definitively understood.

Robert Macdonald, Regulations Coordinator, has determined that for each year of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be regulations that reflect the intent of the Texas Parks and Wildlife Commission to ensure that the marine ecosystems will not be negatively impacted by aquaculture facilities established in Texas waters.

The department has determined that small or micro-businesses will not be affected by the proposed rules, because there are no offshore aquaculture activities currently permitted by the department to operate in Texas waters. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed amendments may be submitted to Paul Hammerschmidt, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 (e-mail: paul.hammerschmidt@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

The proposed amendments affect Parks and Wildlife Code, Chapters 12, 61, and 66, and Agriculture Code, Chapter 134.

§57.251. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (7) (No change.)

(8) Offshore aquaculture zone [~~Outside waters~~]--All waters of [~~the salt water of the state contiguous to and seaward from the shoreline of the state, along~~] the Gulf of Mexico seaward from the shoreline for a distance of three marine leagues, but does not include bays, passes, rivers or other bodies of water [~~as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; including that portion of the gulf of Mexico from the shoreline extending outward three marine leagues (Natural Resources Code §11.012)~~].

(9) - (11) (No change.)

§57.252. General Provisions.

(a) - (c) (No change.)

(d) For offshore aquaculture facilities:

(1) An offshore aquaculture permit authorizes permitted activities in a designated area within the offshore aquaculture zone [~~in a specific Outer Continental Shelf Block~~].

(2) - (6) (No change.)

(e) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 61. DESIGN AND CONSTRUCTION SUBCHAPTER E. GUIDELINES FOR ADMINISTRATION OF TEXAS LOCAL PARKS, RECREATION, AND OPEN SPACE FUND PROGRAM

The Texas Parks and Wildlife Department proposes the repeal of §61.132, amendments to §§61.133 - 61.136, and new §§61.132, 61.138, and 61.139, concerning Guidelines for Administration of the Texas Local Parks, Recreation, and Open Space Fund Program.

The proposed amendments to §§61.132 - 61.136 would implement modifications to existing programs. Proposed new

§61.138, concerning Urban Park Indoor Grants, and §61.139, concerning Urban Park Outdoor Grants, would implement the requirements of House Bill (H.B.) 12, §39, which amended the Parks and Wildlife Code, Chapter 24, by adding new Subchapter B requiring the department to adopt rules and regulations for grant assistance to large county and municipality recreation and parks programs. The provisions of H.B. 12 authorize the department to make assistance grants and matching grants to large counties and municipalities, which are defined as "a county or municipality with a population of 500,000 or more." Additionally, H.B. 12 creates a special fund in the treasury and dedicates the fund to the award of the grants for large counties and municipalities.

In developing the proposed amendments and new sections, the department held five hearings across the state, conducted an on-line survey, and hosted webcasts to solicit and encourage public comment. The proposed amendments and new sections are consistent with the consensus of that public outreach effort.

The repeal of §61.132, concerning Texas Recreation and Parks Account Grants Manual, is necessary for the adoption by reference of the manual. The manual has been altered to be consistent with the changes proposed in this rulemaking.

Proposed new §61.132, concerning Texas Recreation and Parks Grants Manual, would adopt by reference the newest edition of the manual, which is now named the Texas Local Park Grants Programs Manual.

Current §§61.133 - 61.136 govern the process of application, review, and reward for four specific grants programs administered by the department. Section 61.133 governs grants for outdoor recreation programs; §61.134 governs grants for indoor recreation programs; §61.135 governs grants for community outreach programs; and §61.136 governs grants for small community programs. In general, the proposed amendments would implement identical or similar alterations to the grant process for each type of grant.

The proposed amendment to §61.133, concerning Grants for Outdoor Recreation Programs, would: remove the program priority category for at-risk youth and redistribute the points from that category; create a program priority category for the department's Land and Water Resources Conservation and Recreation Plan; alter the current scoring system by allowing for the award of priority points based on master planning and adjusting the remaining priority scoring weights accordingly; increase total point values for renovation while reducing point values for recreational elements vs. support elements; clarify the types of recreation categories that may be addressed in the master plan; correct a formula used to calculate priority points for elderly, minority, and low-income residents; create a generic definition of low-income for purposes of determining service populations; replace the current award criterion for "unique or significant natural resources" with an award criterion for "natural resources representative of the ecological characteristics of the region;" allow for scoring weight to be given to prospective acquisition, preservation, or management of projects based on acreage or quality; increase total points for acquisition projects; clarify the award of priority points and increase the total available points for environmentally responsible activities; provide for reduction of points if the sponsor is not in compliance with current obligations with respect to existing awards; and provide for the automatic award of points for applications submitted by the deadlines established by the department.

Current §61.133(a) establishes a suite of priority criteria used by the department to evaluate and rank grant proposals for possible award. Subsection (a)(7) creates a priority criterion for low-income, minority, elderly, or at-risk youth populations. The proposed amendment would eliminate the at-risk youth component of the criterion. The intent of the current rule is to assist in the development of parks and facilities that benefit specific populations. The department's concern is that it is unable to corroborate continued program activity after the completion of projects for which funds have been awarded. Additionally, the department finds that a qualitative definition of "at-risk youth" is problematic.

The proposed amendment to §61.133(a) would add a new priority criterion to enable the department to consider a proposal's consistency with the Texas Parks and Wildlife Land and Water Resources Conservation and Recreation Plan (the Plan) as part of the evaluation process. The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation.

The proposed amendment to §61.133(b)(2) would clarify that master plans may cover multiple jurisdictions.

The proposed amendment to §61.133(b)(3) would eliminate the current two-year standard for supplying summaries of plan updates and replace it with a five-year standard. The department has determined that most planning activities done by local communities are on a five- or ten-year cycle. The proposed amendment is necessary to make compliance more synchronous with the planning process.

Under the current rules, the department scores applications on the basis of priority points awarded for various discrete criteria tied to specific recreational opportunities and services. Due to the increasing needs of local communities for financial assistance in providing recreational opportunity, current funding levels are insufficient to award requested grants to all applicants. In reviewing the overall process, the department has determined that an increased emphasis on local planning is necessary to provide for the most effective delivery of program benefits to the citizens of the state. The proposed amendment to subsection (c)(7)(A) would therefore adjust the current structure of the program by creating "planning points" to encourage and reward sound local planning for addressing recreational needs. In order to achieve this reconfiguration, the proposed amendment would replace the current methodology of awarding points for individual priority needs with a variable weighting system that considers the aggregate number of priority needs identified in the sponsor's application and that are consistent with the applicant's master plan.

Current §61.133(c)(7)(B) addresses the provision of diverse park and recreation opportunities and facilities. The current rule is broadly worded. The department has determined that greater detail is needed to assist applicants in more precisely defining the opportunities and facilities for which funding assistance is sought, which will in turn provide the department with a clearer understanding of the exact nature of each applicant's request. Therefore, the proposed amendment would identify ten specific types of activities or facilities that must be identified either in the applicant's master plan or by means of a documented public input process (if the applicant does not have a master plan).

Current §61.133(c)(7)(D) addresses the geographic distribution or innovative use of parks and recreation lands and facilities within the sponsor's jurisdiction. As discussed previously, the department seeks to encourage and reward sound local plan-

ning. Accordingly, the proposed amendment would allow for the award of priority points under the criterion only if a prospective project has been identified in either in the applicant's master plan or by means of a documented public input process (if the applicant does not have a master plan).

Current §61.133(c)(7)(D)(i) and (ii) provide equations for determining point awards based on percentages of specific populations served by prospective projects. In order to be mathematically correct, the value obtained by the equation must be divided by 100 to yield a value that is weighted correctly. The proposed amendment would make that correction.

Current §61.133(c)(7)(F) uses the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint as the determinant of low-income status for the purpose of identifying a prospective project's primary constituency. There are various federal definitions of low-income standards. The department does not wish to inadvertently exclude potential service populations, so the proposed amendment would replace the current standard with a generic reference to any federal determination of low-income status.

Current §61.133(c)(7)(H) addresses the award of points for the proposed acquisition of land that contains "unique or significant" natural resources. The department has determined that the current standard may be confusing. The intent of the provision is to recognize prospective acquisitions that would preserve natural resource value for public enjoyment. The qualification of "unique or significant" is not meant in an absolute context, but rather to indicate that a prospective acquisition is relevant in terms of its natural resource value. Therefore, the proposed amendment would replace the phrase "unique or significant" with the phrase "natural resources representative of the ecological characteristics of the region" in order to more accurately indicate the department's purpose. Additionally, current §61.133(c)(7)(H)(i) and (ii) identify potential points awards for the acquisition of wetlands or areas that are otherwise vulnerable or contain rare, threatened, or endangered species. The department has determined that it is necessary to qualify the current rule to allow for evaluation on the basis of acreage or quality of the prospective acquisition. The intent of the proposed amendment is to provide for comparison of competing applications in order to rank them in terms of the overall conservation and recreation benefits offered. For example, a very small parcel of land might have a high specific conservation value with respect to specific features, but another project might preserve more natural resource value in general because of its size. The proposed amendment would indicate that such considerations will be factored into the process of awarding points.

Current §61.133(c)(7)(J) addresses the extent which a prospective project will promote environmentally responsible activities and development, such as native landscaping, energy efficiency, or recycling. Rather than award points based on each of the elements listed in an application, the department has determined that it would be more effective to award points based on the overall ecological diversity, innovation, and cost of the prospective project. The proposed amendment is intended to result in the evaluation of prospective projects on a qualitative rather than quantitative basis.

Current §61.133(c)(7)(K) addresses projects that would provide significant linkages between existing parks or facilities. The proposed amendment would clarify the department's intent to encourage ecologically friendly linkages, such as trails and green corridors, rather than physical infrastructure, and would increase the potential total score by five points.

The department occasionally receives applications for project funding from sponsors that have not complied with the obligations of previous grant awards. In order to ensure that the public receives the highest return on the limited funds available, the proposed amendment would add new subsection (c)(7)(N) to allow the department to deduct up to five points from the score of projects that are received from sponsors that are non-compliant with existing obligations.

The department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities, particularly small communities, do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline. The provision is intended to provide an incentive for applicants to contact the department for assistance in advance of deadlines.

The proposed amendment to §61.134, concerning Grants for Indoor Recreation Programs, would implement most of the changes also being made to §61.133, and for the same reasons contained in the discussion of that section. The changes that the amendment to §61.134 shares with §61.133 would: remove award priority for at-risk youth and redistribute points to the remaining priority categories; allow a longer time period for submission of master plan updates and for the consideration of multi-jurisdictional plans; create a generic definition of low-income for purposes of determining service populations; create a program priority category for the department's Land and Water Resources Conservation and Recreation Plan; alter the current scoring system by allowing for the award of priority points based on master planning and adjusting the remaining priority scoring weights accordingly; increase total point values for renovation while reducing point values for recreational elements (correct a formula used to calculate priority points for elderly, minority, and low-income residents; clarify the award of priority points and increase the total available points for environmentally responsible activities; provide for reduction of points if the sponsor is not in compliance with current obligations with respect to existing awards; and provide for the automatic award of points for applications submitted by the deadlines established by the department.

The proposed amendment to §61.135, concerning Grants for Community Outreach Programs, would replace the current standard for determining low-income status, require greater detail from sponsors for prospective projects serving youth and physically/mentally challenged populations, clarify the award of points for projects that encourage partnerships with organized groups, clarify requirements for projects involving department facilities and programs, require quantification of service populations for at-risk youth and educational projects, and implement a new category of program award to address projects that include outdoor service projects.

Current §61.135(b)(5)(A)(v) uses the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint as the determinant of low-income status for the purpose of identifying a prospective project's primary constituency. There are various federal definitions of low-income standards. The department does not wish to inadvertently ex-

clude potential service populations, so the proposed amendment would replace the current standard with a generic reference to any federal determination of low-income status.

Current §61.135(b)(5)(A)(i) and (ii) allow for the award of points for projects that identify physically/mentally challenged or youth populations as a project's primary constituency. The department seeks more detailed information from applicants in order to more carefully evaluate prospective project awards. Therefore, the proposed amendment would require applicants to quantify the population to be served.

Current §61.135(b)(5)(B) requires the submission of signed agreements between the project sponsor and the proposed partnership group. The proposed amendment would eliminate that requirement and instead allow the submission of partnership letters from the partnering organization stating what the partners are providing and the value of the contribution. The proposed amendment is necessary to establish the elements needed by the department to determine which proposals are more competitive than others in terms of overall value.

Current §61.135(b)(5)(F) addresses proposed projects that would involve department programs or facilities. Although the current rule provides for the award of one point per department facility used, department staff used, or department program provided, the department wishes to clarify that such facilities, personnel, and programs must be named, identified, or confirmed. The proposed amendment would accomplish that goal.

Current §61.135(b)(5)(G) addresses projects specifically targeting at-risk youth. The proposed amendment would require sponsors to provide more detail about the demographics of the client base the project would serve, as well as more detailed descriptions of the exact types of activities to be funded.

Current §61.135(b)(5)(I) addresses outdoor educational activities. The current rule requires applicants to submit a discussion of the curriculum to be employed in the project in order to receive points for potential award. The department has determined that it would be more helpful and productive to analyze and compare outdoor education projects on the basis of goals and objectives. Therefore, the proposed amendment would eliminate the requirement for a discussion of curriculum and replace it with a requirement for discussion of goals and objectives with respect to outdoor recreation and environmental education programs delivered to a service population.

The proposed amendment to §61.135 also would introduce new subsection (b)(5)(J), which would create a point category for outdoor service projects. The department has determined that many projects undertaken as service projects by groups such as the Boy Scouts, are consonant with the department's mission and should be eligible for assistance. The new provision would require the applicant to identify a specific project related to the department's mission, how the projects will address a specific need or needs, how youth will be involved in the project, and how the project's impact will be evaluated. The provision would also require the applicant to present a partnership letter from the beneficiary of the project.

The proposed amendment to §61.136, concerning Small Community Grant Programs, would eliminate a priority category for recreational diversity; remove the program priority category for at-risk youth and redistribute the points from that category; create a program priority category for the department's Land and Water Resources Conservation and Recreation Plan; increase the maximum population threshold for additional points that could be awarded to very small communities; remove the priority category for at-risk youth; require documented public input for projects that would create recreational opportunity for the elderly; alter the scoring methodology for projects proposing to promote environmentally responsible activities; create a program priority category for the department's Land and Water Resources Conservation and Recreation Plan ; provide for reduction of points if the sponsor is not in compliance with current obligations with respect to existing awards; and provide for the automatic award of points for complete applications.

The proposed amendment to §61.136 would eliminate subsection (a)(3) which creates a priority category for projects that would increase recreational diversity. The department has determined that due to the small size of communities eligible for small community grants, all projects by default contribute to the diversity of recreation opportunity in such communities. Therefore, the current provision is unnecessary.

Current §61.136(a)(6) establishes a suite of priority criteria used by the department to evaluate and rank grant proposals for possible award. Subsection (a)(6) creates a priority criterion for low-income, minority, elderly, or at-risk youth populations. The proposed amendment would eliminate the at-risk youth component of the criterion. The intent of the current rule is to assist in the development of parks and facilities that benefit specific populations. The department's concern is that it is unable to corroborate continued program activity after the completion of projects for which funds have been awarded. Additionally, the department finds that a qualitative definition of "at-risk youth" is problematic.

The proposed amendment to §61.136 would add a new priority criterion to enable the department to consider a proposal's consistency with the Texas Parks and Wildlife Land and Water Resources Conservation and Recreation Plan (the Plan) as part of the evaluation process. The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation.

The proposed amendment to §61.136 would alter the maximum population requirements for eligibility for points under the provisions of subsection (b)(7), increasing it from 2,000 persons to 2,500 persons. This element of the small community grants program is intended to serve very small communities. The department has determined that a slight increase in the maximum population ceiling would allow the program to be accessible by more communities.

Current §61.136(b)(7)(D) uses the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint as the determinant of low-income status for the purpose of identifying a prospective project's primary constituency. There are various federal definitions of low-income standards. The department does not wish to inadvertently exclude potential service populations, so the proposed amendment would replace the current standard with a generic reference to any federal determination of low-income status. The current rule also allows for the award one point for each facility or activity that improves recreational opportunity for elderly citizens. The proposed amendment would require that the sponsor document the need for the facility or activity by means of a public input process.

Current §61.136(c)(7)(H) addresses the extent which a prospective project will promote environmentally responsible activities and development, such as native landscaping, energy efficiency,

and recycling. Rather than award points based on each of the elements listed in an application, the department has determined that it would be more effective to award points based on the overall ecological diversity, innovation, and cost of the prospective project. The proposed amendment is intended to result in the evaluation of prospective projects on a qualitative rather than quantitative basis.

The department occasionally receives applications for project funding from sponsors that have not complied with the obligations of previous grant awards. In order to ensure that the public receives the highest return on the limited funds available, the proposed amendment would add new subsection (b)(7)(I) to allow the department to deduct up to five points from the score of projects that are received from sponsors that are non-compliant with existing obligations.

The department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities, particularly small communities, do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline.

Proposed new §61.138, concerning Outdoor Urban Park Grants Program, would create rules for conservation and recreation grant assistance for large counties and municipalities as authorized under House Bill 12, §39, which amended Parks and Wildlife Code, Chapter 24, by adding new Subchapter B, which requires the department make grants to large counties or municipalities to provide one-half of the costs of the planning, acquisition, or development of a park, recreational area or open space area to be owned and operated by the county or municipality. New Subchapter B also requires the department to make grants to large counties, municipalities, or non-profit corporations for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations.

The department's existing grants programs are segmented in order to acknowledge two broadly different areas of recreational need: indoor and outdoor. Within each of those categories, the department identifies a suite of recreation need categories, which potential grantees use to create directed proposals requesting grant assistance for specific purposes. In implementing the legislative directives of H.B. 12, the department maintains that segmentation by creating Outdoor and Indoor grant application and scoring processes. The department conducted extensive outreach activities to the six cities and seven counties that meet the statutory requirements for eligibility for grant assistance under the terms of H.B. 12. Those outreach and consultation activities serve as the basis of the department's identification of the priority needs represented in the scoring system set forth in the new section.

Proposed new §61.138(a) would set forth the purpose and priorities of the Outdoor Urban Park Grants Program, establish the methodology for competitive selection, and stipulate that funding is contingent on the availability of funds. The Project Priority Scoring System established in the section is necessary because the department receives more applications for worthy projects than it can fund. Since not all projects can be funded, it is necessary to create a uniform scoring system for evaluating and ranking projects in order to award grant funding to the most deserving projects.

Proposed new §61.138(b) would stipulate that a proposal will not be considered by the commission more than twice unless it has been altered to raise its score. The proposed subsection is necessary to encourage local communities to be innovative and proactive in planning and pursuing grant assistance and to enable the department and the commission to eliminate proposals that have not been deemed competitive after multiple considerations in essentially the same form.

Proposed new §61.138(c) would set forth requirements related to the sponsor's local master plan on file with the department. Minimum master plan standards would have to be met to qualify for priority points, but a master plan would not be required to apply for grant assistance. The proposed new provision would require a local master plan to be on file with the department at least 60 days prior to the submission of a grant application, which is necessary to give the department adequate time to analyze and if necessary, work with the prospective sponsor to edit the plan. The proposed provision would require that a plan be formally endorsed by the applicable governing body of the sponsor, that it be jurisdiction-wide in scope, which is necessary to ensure that the plan is consistent with local authority and applies to the entirety of a jurisdiction or jurisdictions. The plan must also specifically identify the time period within which the goals and objectives of the plan are to be carried out, and are required to cover a 10-year period. Additionally, the proposed new subsection would stipulate that if a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Plans older than 10 years will be considered obsolete and new plans will be required. In general the proposed new provisions are necessary to encourage local communities to engage in sensible planning in order to enable the department to maximize the efficiency and benefit of the grants assistance program.

Proposed new §61.138(d) would set forth 13 broad categories and subsidiary elements of each that the department considers to be significant indicators of the worthiness of a project proposal. The categories are acquisition, development, restoration, trails/corridors/greenways, sports facilities, underserved populations, joint ventures/partnerships, master plan, threat, consistency with the department's Land and Water Conservation Plan, compliance, urban biologist consultation, and historical/cultural resources.

Proposed new §61.138(d)(1) would set forth the elements used to evaluate a proposal's merit with respect to acquisition of land. The department would award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. Open space is critical for parks and recreation in the environment, serving as wildlife habitat, demonstration areas, aesthetic buffers, and places that the public can enjoy nature or outdoor-related recreation. In general, the department will award points to projects on the basis of the project's contemplation of acquisition of open space, trails and green corridors (including those that connect parkland), additions to existing parkland, recreation facilities related to natural resource enjoyment, and

adaptive reuse of land, all within the context of utility and significance in the urban environment.

Proposed new §61.138(d)(2) would set forth the elements used to evaluate a proposal's merit with respect to the development of conservation and recreation opportunity. The department would award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. The acquisition of land for parks and recreation is important, but equally important is how land is developed for parks and recreation use. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of neighborhood parks, nature centers, regional park and conservation areas, green construction, multi-purpose facilities, and outdoor aquatic recreation.

Proposed new §61.138(d)(3) would set forth the elements used to evaluate a proposal's merit with respect to the restoration of parks and recreation infrastructure that is no longer used for its intended or original purpose. Many urban areas in the state contain infrastructure that while no longer usable for the purposes for which they were built or established, by virtue of location, size, or features are valuable as parks and recreation assets. The department would award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of neighborhood parks, nature centers, regional park and conservation areas, green construction, multi-purpose facilities, and outdoor aquatic recreation.

Proposed new §61.138(d)(4) would set forth the elements used to evaluate a proposal's merit with respect to the creation or enhancement of trails, corridors, and greenways. Since space is at a premium in urban areas, small-footprint projects such as a trail that connects parks or corridors and greenways can provide recreational opportunity while protecting watersheds, offering habitat for urban wildlife, or providing aesthetic buffers. The department would award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to such considerations.

Proposed new §61.138(d)(5) would set forth the elements used to evaluate a proposal's merit with respect to the provision of sport facilities. The recreational needs of urban areas include outdoor recreation activities such as sports. With land at a premium, the creation or enhancement of ball fields and other outdoor facilities is important. The department would award points based on the extent to which a proposed project contemplates large facilities dedicated to outdoor sports.

Proposed new §61.138(d)(6) would set forth the elements used to evaluate a proposal's merit with respect to the benefits the project would afford to underserved populations, such as of low-income, minority, or elderly citizens. The department would award points based on the extent to which a proposed project would create or enhance recreational opportunities, on the basis of demographic analysis, and in the case of elderly, stated as an identified need in their master plan or through an alternative public input process in those urban areas where there are demonstrably few or insufficient recreational opportunities for underserved populations.

Proposed new §61.138(d)(7) would set forth the elements used to evaluate a proposal's merit with respect to joint ventures and partnerships. Many urban areas consist of multiple political jurisdictions that share goals and needs, and it is often more efficient for such entities to pool finances and administration to maximize the delivery of recreation to constituents. Similarly, there are many non-profit and advocacy groups with an interest in parks and recreation issues. Therefore, the department would award points based on the extent to which a project involves such multi-organizational cooperation. The proposed new provision would consider all partners, not just those making financial commitments, and would weight the award of points based on the number of cooperators involved. The proposed new provision would also require binding documentation of the nature of the degree of commitment by each cooperator in order to preserve project integrity, and would exclude partnerships restricted to program provision, which is necessary because the purpose of the grant program is not to provide programs, but to provide facilities and space for outdoor recreation activities.

Proposed new §61.138(d)(8) would articulate requirements related to master planning activities. The department has determined that the efficacy of the creation, delivery, and enhancement of outdoor recreational opportunity is positively correlated to effective planning on the part of local communities. To encourage good planning, the department will award points to projects whose sponsor has submitted a locally adopted and department-approved master plan, and to the extent that a proposed project is consistent with that plan.

Proposed new §61.138(d)(9) would establish criteria for awarding points to proposals on the basis of the immediate necessity of award in order to prevent the loss of recreational opportunity. Urban environments are characterized by highly fluid, time-sensitive real estate environments in which the window of opportunity to acquire land or property of conservation, park, or recreational value is momentary. To acknowledge this, the proposed new provision would award points based on the exigency of time.

Proposed new §61.138(d)(10) would set forth the elements used to evaluate a proposal's merit with respect to the project's value as a cultural or historical resource. Urban areas often contain sites or features of significant cultural or historical import that inform the character and identity of the area. The proposed new provision would recognize that such sites or features are appropriate for park or recreational use.

Proposed new §61.138(d)(11) would award points for a proposal's consistency with the department's Land and Water Conservation Plan (Plan). The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation. The department believes that proposed projects that are consistent with or in furtherance of the Plan should receive credit.

Proposed new §61.138(d)(12) is an administrative provision that would penalize sponsors that are not in compliance with the obligations of existing grant agreements and reward the punctual submission of project proposals. The department believes that sponsors who for whatever reason are in demonstrable noncompliance with the obligations of existing or previous agreements should receive a reduced level of consideration for subsequent proposals. As the administrator of the grants assistance program, the department is responsible for ensuring that the public is served in the most efficient and effective manner possible. Therefore, the proposed new provision would allow for the deduction of five points for any proposal submitted by a spon-

sor that in the department's view is in noncompliance. Additionally, the department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline. The provision is intended to provide an incentive for applicants to contact the department for assistance in advance of deadlines.

Proposed new §61.138(d)(13) would award points for projects if the sponsor has consulted with and received an assessment from the department's urban biology program at least 30 days prior to the application deadline. The department's urban biology program was established to provide biological support and expertise to the public on the management and conservation of environmental resources in urban environments. The proposed provision would offer a limited point award in order to provide an incentive for sponsors to consider a project's consistency with the efforts of the urban biology program.

Proposed new §61.139, concerning Indoor Urban Park Grants Program, would establish much the same scoring system priorities for proposed indoor projects as are proposed for outdoor projects. The proposed new section would set forth 10 broad categories and subsidiary elements of each that the department considers to be significant indicators of the worthiness of a project proposal. The categories are development, restoration, underserved populations, joint ventures/partnerships, master plan, threat, consistency with the department's Land and Water Conservation Plan, compliance, urban biologist consultation, and historical/cultural resources.

Proposed new §61.139(a) would set forth the purpose and priorities of the Indoor Urban Park Grants Program, establish the methodology for competitive selection, and stipulate that funding is contingent on the availability of funds. The Project Priority Scoring System established in the section is necessary because the department receives more applications for worthy projects than it can fund. Since not all projects can be funded, it is necessary to create a uniform scoring system for evaluating and ranking projects in order to award grant funding to the most deserving projects.

Proposed new §61.139(b) would stipulate that a proposal will not be considered by the commission more than twice unless it has been altered to raise its score. The proposed subsection is necessary to encourage local communities to be innovative and proactive in planning and pursuing grant assistance and to enable the department and the commission to eliminate proposals that have not been deemed competitive after multiple considerations in essentially the same form.

Proposed new §61.139(c) would set forth requirements related to the sponsor's local master plan on file with the department. Minimum master plan standards would have to be met to qualify for priority points, but a master plan would not be required to apply for grant assistance. The proposed new provision would require a local master plan to be on file with the department at least 60 days prior to the submission of a grant application, which is necessary to give the department adequate time to analyze and if necessary, work with the prospective sponsor to edit the plan. The proposed provision would require that a plan be formally endorsed by the applicable governing body of the sponsor, that it be jurisdiction-wide in scope, which is necessary to ensure that the plan is consistent with local authority and applies to the entirety of a jurisdiction or jurisdictions. The plan must also specifically identify the time period within which the goals and objectives of the plan are to be carried out, and are required to cover a 10-year period. Additionally, the proposed new subsection would stipulate that if a plan is more than five years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Plans older than 10 years will be considered obsolete and new plans will be required. In general the proposed new provisions are necessary to encourage local communities to engage in sensible planning in order to enable the department to maximize the efficiency and benefit of the grants assistance program.

Proposed new §61.139(d)(1) would set forth the elements used to evaluate a proposal's merit with respect to the development of recreation opportunity. The department would award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to recreation in urban areas. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of neighborhood parks, nature centers, regional parks, green construction, and multi-purpose facilities.

Proposed new §61.139(d)(2) would set forth the elements used to evaluate a proposal's merit with respect to the restoration of conservation and recreation infrastructure that is no longer used for its intended or original purpose. Many urban areas in the state contain infrastructure that while no longer usable for the purposes for which they were built or established, by virtue of location, size, or features are valuable as parks and recreation assets. The department would award points based on the extent to which a proposed project would satisfy criteria the department has determined are important to conservation and recreation in urban areas. In general, the department will award points to projects on the basis of the project's contemplation, within the context of utility and significance in the urban environment, of restoration and adaptive reuse of existing infrastructure. The proposed new provision would specifically prohibit grant assistance for basic maintenance, because the intent of the department is to assist in the restoration and enhancement of facilities, rather than maintenance.

Proposed new §61.139(d)(3) would set forth the elements used to evaluate a proposal's merit with respect to the benefits the project would afford to underserved populations, such as of low-income, minority, or elderly citizens. The department would award points based on the extent to which a proposed project would create or enhance recreational opportunities, on the basis of demographic analysis, in those urban areas where there are demonstrably few or insufficient recreational opportunities for underserved populations.

Proposed new §61.139(d)(4) would set forth the elements used to evaluate a proposal's merit with respect to joint ventures and partnerships. Many urban areas consist of multiple political jurisdictions that share goals and needs, and it is often more efficient for such entities to pool finances and administration to maximize the delivery of recreation to constituents. Similarly, there are many non-profit and advocacy groups with an interest in parks and recreation issues. Therefore, the department would

award points based on the extent to which a project involves such multi-organizational cooperation. The proposed new provision would consider all partners, not just those making financial commitments, and would weight the award of points based on the number of cooperators involved. The proposed new provision would also require binding documentation of the nature of the degree of commitment by each cooperator in order to preserve project integrity, and would exclude partnerships restricted to program provision, which is necessary because the purpose of the grant program is not to provide programs, but to provide facilities and space for indoor recreation activities.

Proposed new §61.139(d)(5) would articulate requirements related to master planning activities. The department has determined that the efficacy of the creation, delivery, and enhancement of indoor recreational opportunity is positively correlated to effective planning on the part of local communities. To encourage good planning, the department will award points to projects whose sponsor has submitted a locally adopted and department-approved master plan, and to the extent that a proposed project is consistent with that plan.

Proposed new §61.139(d)(6) would establish criteria for awarding points to proposals on the basis of the immediate necessity of award in order to prevent the loss of recreational opportunity. Urban environments are characterized by highly fluid, time-sensitive real estate environments in which the window of opportunity to acquire land or property of conservation, park, or recreational value is momentary. To acknowledge this, the proposed new provision would award points based on the exigency of time.

Proposed new §61.139(d)(7) would set forth the elements used to evaluate a proposal's merit with respect to the project's value as a cultural or historical resource. Urban areas often contain sites or features of significant cultural or historical import that inform the character and identity of the area. The proposed new provision would recognize that such sites or features are appropriate for park or recreational use.

Proposed new §61.139(d)(8) would award points for a proposal's consistency with the department's Land and Water Conservation Plan (Plan). The Plan is the core guidance document that drives all of the department's efforts in conservation, management, and recreation. The department believes that proposed projects that are consistent with or in furtherance of the Plan should receive credit.

Proposed new §61.139(d)(9) is an administrative provision that would penalize sponsors that are not in compliance with the obligations of existing grant agreements and reward the punctual submission of project proposals. The department believes that sponsors who for whatever reason are in demonstrable noncompliance with the obligations of existing or previous agreements should receive a reduced level of consideration for subsequent proposals. As the administrator of the grants assistance program, the department is responsible for ensuring that the public is served in the most efficient and effective manner possible. Therefore, the proposed new provision would allow for the deduction of five points for any proposal submitted by a sponsor that in the department's view is in noncompliance. Additionally, the department establishes informal deadlines for receipt of applications. Occasionally, problems arise as a result of the receipt of applications that although received by the deadline, are incomplete and therefore cause the diversion of administrative effort to remedy. The department understands that many communities do not have the staff or the expertise to negotiate the process perfectly, so rather than create a standard that would eliminate or penalize deserving projects, the department chooses to allow up to five points to projects for which a complete application was received by the deadline. The provision is intended to provide an incentive for applicants to contact the department for assistance in advance of deadlines.

Proposed new §61.139(d)(10) would award points for projects if the sponsor has consulted with and received an assessment from the department's urban biology program at least 30 days prior to the application deadline. The department's urban biology program was established to provide biological support and expertise to the public on the management and conservation of environmental resources in urban environments. The proposed provision would offer a limited point award in order to provide an incentive for sponsors to consider a project's consistency with the efforts of the urban biology program.

Tim Hogsett, Director of Recreational Grants, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state government as a result of enforcing or administering the rule. Funds for the award grants administered under the rules are appropriated biennially by the Texas Legislature for that purpose. There will be no fiscal implications for other units of state government.

There will be positive fiscal implications for units of local government that qualify for grants awards.

Mr. Hogsett also has determined that for each of the first five years the rules as proposed are effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the department's discharge of its statutory obligation to operate grants programs to provide the local communities of this state with financial assistance for the acquisition and development of parks, recreation areas, open space areas, and outreach activities for the enjoyment of the citizenry.

The proposed rules would have no direct impact on small and micro-businesses. The proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, no statement of the effect on small and micro-businesses is required under Government Code chapter 2006.

The department has determined that the rule will not directly affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposal may be submitted to Tim Hogsett, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 912-7124 (e-mail: tim.hogsett@tpwd.state.tx.us).

31 TAC §61.132

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

The proposed repeal affects Parks and Wildlife Code, Chapter 24.

§61.132. Texas Recreation and Parks Account Grants Manual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706246
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 389-4775

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31 TAC §§61.132 - 61.136, 61.138, 61.139

The amendments and new sections are proposed under Parks and Wildlife Code, Chapter 24, which requires the department to adopt regulations for grant assistance.

The proposed amendments and new sections affect Parks and Wildlife Code, Chapter 24.

§61.132. Texas Local Park Grants Programs Manual.

(a) The Texas Local Park Grants Programs Manual contains the standards and requirements for the application, evaluation and award of all grants made under this subchapter.

(b) The Texas Local Park Grants Programs Manual is adopted by reference and may be obtained by contacting the Texas Parks and Wildlife Department at 4200 Smith School Road, Austin, Texas, 78744; (512) 912-7124; or http://www.rec.grants@tpwd.state.tx.us.

§61.133. Grants for Outdoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for outdoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for outdoor recreation projects are:

(1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to increase recreational diversity;

(4) to provide water-related park and recreation opportunities;

(5) to improve geographic distribution and innovative use of park and recreation opportunities;

(6) to maximize the use of funds for basic park and recreation opportunities;

(7) to improve park and recreation opportunities for low income, minority, and elderly [~~and youth-at-risk~~] citizens;

(8) to reward cooperative efforts between project sponsors and other entities;

(9) to preserve significant natural resources through public land acquisition and stewardship;

(10) to renovate existing, obsolete park and recreation areas and facilities;

(11) to promote environmentally responsible activities and development;

(12) to provide linear greenbelt linkages to parks, neighborhoods, or public facilities; [~~and~~]

(13) to encourage the appreciation and preservation of cultural resources; and [~~.~~]

(14) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for planning and priority points. Local sponsors may submit applications without having a department-approved master plan; however, only those sponsors that have a TPWD approved park, recreation and open space master plan will receive points for completing a local plan. In addition, only proposals that address priority needs identified in approved plans will receive priority points under the provisions of subsection (c)(7) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally endorsed by the applicable governing body of the sponsor, and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be comprehensive and assess the entire jurisdiction area of the project sponsor. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, the plan should cover the entire jurisdiction, and then may break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate. Master plans that contemplate service delivery across more than one jurisdiction may be submitted by a local sponsor, with any necessary supplemental information, provided the plan has been endorsed and adopted by the applicable governing body of the sponsor.

(3) Plan duration. The plan must specifically identify the time period within which the goals and objectives of the plan are to be carried out. Plans should cover a minimum ten-year period. If a plan is more than five [~~two~~] years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 10 years will be considered obsolete and new plans will be required. [~~Sponsors with plans approved prior to the year 2000 will be required to prepare a new plan to remain eligible. Plans approved in 2000 and later may be extended for another five-year period, provided the plan meets these requirements for updates and is approved by the department.~~]

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development.

(E) inventory of existing park, recreation and open space areas and facilities (including schools).

(F) needs assessment and identification. Information under this subparagraph shall be area- and facility-specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) priority lists for outdoor and indoor needs (may be separate or combined);

(ii) if necessary, a map of all specific area(s) intended for open space acquisition and preservation, identified as a need, discussed, and prioritized, if desired;

(iii) where appropriate, a discussion of renovation/redevelopment needs, which may be ranked as a priority; and

(iv) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (which must identify and prioritize which needs are to be met, where, and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Outdoor recreation project priority scoring system.

(1) Outdoor recreation projects presented to the commission shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission.

(5) Each site of a multiple-site project shall be scored individually. Individual site scores will be weighted on a pro-rata share of the total budget for the entire project. All weighted scores will be added together for the total project score.

(6) If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further.

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

(A) the sponsor has a current department-approved master plan on file at the time of application and the project will satisfy the priority outdoor recreation needs identified in the master plan required by this subparagraph. Consideration of "need" for this criterion includes basic support facilities/infrastructure critical to the park and recreation experience. Eligible support facilities/infrastructure are limited to restrooms, roads and parking, area lighting (to ensure public safety), utilities essential to eligible support facilities, irrigation, and land acquisition. Scoring shall be as follows, up to a total of 15 points:

(i) for having a current department-approved master plan on file at the time of application submission - 5 points;

(ii) for satisfying 3 of the top 3 priority needs - 10 points;

(iii) for satisfying 2 of the top 3 priority needs - 6 points; and

(iv) for satisfying 1 of the top 3 priority needs - 3 points.

~~*[(i)* for satisfying priority need 1: 5 points;]~~

~~*[(ii)* for satisfying priority need 2: 4 points;]~~

~~*[(iii)* for satisfying priority need 3: 3 points;]~~

~~*[(iv)* for satisfying priority need 4: 2 points;]~~

~~*[(v)* for satisfying priority need 5: 1 point.]~~

(B) the project will provide diversity of park and recreation opportunities/facilities. Priority points for this criterion shall be awarded based on the number of park and recreation opportunities/facilities provided within the intended service area. One point will be awarded for each type of significant recreation category listed in this subparagraph, provided each element is specifically identified in a locally adopted park, recreation and open space master plan or, if the sponsor does not have an adopted master plan, by a documented public input process [~~facility~~], up to a total of 10 points. The significant recreation categories are: [~~Low-impact facilities may be grouped rather than receiving individual points.~~]

(i) campgrounds;

(ii) sports and playfields;

(iii) picnic areas;

(iv) golf courses;

(v) swimming facilities;

(vi) trails;

(vii) passive recreation;

(viii) amphitheater;

(ix) fishing/hunting facilities; and

(x) natural area.

(C) the project will provide improved natural water-based park and recreation opportunities, up to a total of 6 points. The project provides direct park and recreation or conservation opportunities which do not degrade the resource along existing quality water bodies, for no more than one of the following:

(i) coast or lake: 6 points;

(ii) bay or estuary: 5 points;

(iii) river: 4 points (only water bodies named as "rivers" may receive points under this category. All others, e.g., creeks, brooks, bayous, branches, etc., are considered "streams");

(iv) stream (continuous flow): 3 points;

(v) pond: 2 points ("ponds" are generally man-made and no larger than five surface acres. Points will not be awarded for constructing ponds under this category.); or

(vi) wetland: 1-3 points, dependent upon size and quality.

(D) the project will improve the geographic distribution or innovative use of park and recreation lands and facilities in the project's service area or within the sponsor's jurisdiction, up to a total of 10 points.

(i) project provides the first public park in the sponsor's jurisdiction or intended service area: 10 points; or

(ii) project provides significantly new and different park and recreation opportunities (other than school facilities) in the sponsor's jurisdiction or intended service area: 1-10 points. Points for this item shall be awarded only if specific recreation elements are identified in a locally adopted park, recreation, and open space master plan or, if the sponsor does not have an adopted master plan, by a documented public input process. Point awards shall be based on the percentage of construction budget and will be calculated[~~, significance to the community, and originality,~~] as follows: new and different facility costs, divided by total construction costs, multiplied by 10.

(E) the project maximizes the use of development funds for facilities which provide direct park and recreation opportunities, up to a total of 20 [~~25~~] points, determined by dividing the direct recreational facilities costs, including trees and drip irrigation, by the total construction costs and multiplying the result by 20 [~~25~~]. "Total Facilities Costs" includes park/recreation and support/infrastructure facilities, contingency, and all required program signage costs in excess of $1,000.

(F) the project improves park and recreation opportunities for low-income, minority, and elderly [~~and/or youth-at-risk citizens~~], up to a total of 15 [~~16~~] points.

(i) project improves opportunities for low-income citizens (defined as meeting any federal standard of eligibility for low-income status [~~by the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint~~)]): determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100 [4]. Maximum of 5 [4] points.

(ii) project improves opportunities for minority citizens: determined by multiplying the percentage of population qualifying as minority by 5 and dividing by 100 [4]. Maximum of 5 [4] points.

(iii) project improves opportunities for the elderly: 1 point for each facility or activity that is identified as a need for this special population in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process[~~, typically passive activities, except where facilities are designed specifically for an elderly user group~~]. Maximum of 5 [4] points.

~~*f(iv)* project provides opportunities for youth-at-risk: 1 point for each program offered for youth-at-risk. Sponsor must describe/define the youth-at-risk population and demonstrate how facilities proposed in the application will be specifically programmed. Maximum of 4 points.]~~

(G) the project involves documented cooperation between the sponsor and other public or private entities to provide park and recreation opportunities at the project site(s). Maximum of 20 points.

(i) project involves the contribution of resources from sources other than the sponsor, including publicly owned non-parkland, which serves as all or part of the sponsor's matching share of funds. Maximum of 15 points. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 15.

(ii) project involves cooperation between the sponsor and other public or private entities and resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per activity, to a maximum of 5 points.

(H) the project provides for the acquisition and preservation/conservation of park and recreation lands, including publicly owned non-parkland, which consist of regionally representative [~~unique or significant~~] natural resources or provides desirable wetlands, open space, water access, or needed parkland. Total point range: 1-30 points for not more than one of the following:

(i) project provides for the acquisition and preservation/conservation of a federal, state, regional, or local government identified natural area which is recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife: 5 [~~25~~]-30 points, based on acreage and/or quality; or

(ii) project provides for the acquisition and preservation/conservation of a significant wetland area[~~, recognized by TPWD~~]: 5 [~~20~~]-25 points, based on acreage and/or quality; or

(iii) project provides for the acquisition and preservation/conservation of natural open space land or water for human use and enjoyment that is two acres or larger in size, relatively free of man-made structures (including creek corridors, floodways, natural drainage basins, and areas which may be enhanced for native habitat), and which is identified in an acceptable, published, and adopted local, jurisdiction-wide open space plan or master plan: 5 [~~15~~]-20 points, based on acreage and/or [~~and~~] quality; or

(iv) project provides for the acquisition of land which would provide needed public access to park and recreational waters (see definitions under criteria listed in subparagraph (C) of this paragraph), 1-5 points, as determined below:

(I) coast or lake: 5 points;

(II) bay or estuary: 4 points;

(III) river: 3 points;

(IV) stream (continuous flow): 2 points;

(V) pond: 1 point; or

(v) project provides for the acquisition of needed recreational land proposed for future development: 10 points.

(I) project provides for the renovation or adaptive reuse of an existing obsolete park and recreation area or facilities, determined by dividing the renovation cost by the total construction cost and multiplying the result by 25 [~~20~~]. Maximum of 25 [~~20~~] points.

(J) project promotes environmentally responsible activities and development by the use of activities or techniques such as

xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures. Points for this category will be awarded based on the diversity, innovative nature and/or cost of the project elements, up to a maximum of 10 points [~~1 point is awarded for each conservation element proposed in the grant, up to a maximum of 5 points~~].

(K) project provides significant linkage, i.e., trails and green corridors (not to include streets or sidewalks) to other parks and recreation areas, neighborhoods, or public facilities, up to a maximum of 3 points.

(L) project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural (historical and archaeological) resources through interpretive facilities or preservation strategies: maximum of 3 [~~5~~] points. Points for this item are awarded based on the significance of the enhancement.

(M) project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Sponsor must address how the project meets the goals of the Plan in the proposal narrative. Up to a maximum of 5 points.

(N) sponsor is in compliance with previously funded projects. If sponsor is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(O) a complete application was received by the application deadline - 5 points will be awarded.

§61.134. Grants for Indoor Recreation Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for indoor recreation programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. The priority ranking of a project depends on its score in relation to the scores of other projects under consideration. Funding of projects will depend on the availability of TRPA funds. Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission. In general, recommended priorities for indoor recreation projects are:

(1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to provide indoor recreational diversity;

(4) to improve geographic distribution and innovative use of indoor recreation facilities;

(5) to reward cooperative efforts between project sponsors and other entities;

(6) to provide for the renovation or adaptive reuse of existing, obsolete indoor recreation or other facilities or structures;

(7) to improve indoor recreation opportunities for low-income, minority, and elderly[~~, and youth-at-risk~~] citizens; [~~and~~]

(8) to promote environmentally responsible activities and development; and [~~.~~]

(9) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Local master plan standard requirements. Minimum master plan standards must be met to qualify for planning and priority points. Local sponsors may submit applications without having a department-approved master plan; however, only those sponsors that have a department-approved park, recreation and open space master plan will receive points for completing a local plan. In addition, only proposals that address priority needs identified in approved plans will receive priority points under the provisions of subsection (c) of this section. Master plans must have been received in an approvable format at least 60 days prior to the application submission deadline at which time credit is sought. The following are minimum master plan standards:

(1) Proof of adoption. The plan must be formally endorsed by the applicable governing body of the sponsor, and the endorsement must be included with the document.

(2) Jurisdiction-wide scope. The plan must be comprehensive and assess the entire jurisdiction area of the project sponsor. County plans must cover the entire county, and city or district plans must cover the entire city or district. For large urban areas, plans should cover the entire jurisdiction, and then break the jurisdiction down into regions, sectors, precincts, districts, etc., as appropriate. Master plans that contemplate service delivery across more than one jurisdiction may be submitted by a local sponsor, with any necessary supplemental information, provided the plan has been endorsed and adopted by the applicable governing body of the sponsor.

(3) Plan duration. Plans must specifically identify the time period within which the goals and objectives of the plan are to be carried out. The plan should cover a minimum ten-year period. If a plan is more than five [~~two~~] years old, a brief summary of plan accomplishments to date, as well as applicable updates of demographics, goals and objectives, standards, and maps must be provided to enable the department to recognize and credit program progress. Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input. Plans older than 10 years will be considered obsolete and new plans will be required. [~~Sponsors with plans approved prior to the year 2000 and later may be extended for another five-year period, provided the plan meets these requirements for updates and is approved by the department.~~]

(4) Plan content. The following information should be included in the document:

(A) introduction;

(B) goals and objectives;

(C) plan development process (discuss when the planning process began, plan phases, public input received, survey/studies conducted, committees and/or personnel involved, etc.);

(D) area/facility concepts and standards, including:

(i) population/area service and acreage goals;

(ii) "typical" park and facility standards; and

(iii) applicable local codes, ordinances, and other requirements for community or neighborhood development;

(E) inventory of existing park, recreation and open space areas and facilities (including schools);

(F) needs assessment and identification. Information under this subparagraph shall be area/facility specific, and may include basic support facilities/infrastructure which are critical to the recreational experience. A discussion and identification of open space needs in the master plan, or a separate open space plan, shall be included.

(G) prioritization of needs. Applicant shall include:

(i) separate priority lists for outdoor and indoor needs;

(ii) if necessary, a map of all specific area(s) intended for open space acquisition and preservation, identified as a need, discussed, and prioritized, if desired;

(iii) where appropriate, a discussion of renovation/redevelopment needs, which may be ranked as a priority; and

(iv) plan implementation recommendations, including a timeline and discussion of resources for meeting priorities (must identify and prioritize which needs are to be met, where and when). Any revision of priorities other than an update of accomplishments must present a new priority listing justified by additional public input.

(H) illustrations, maps, charts, surveys, etc.

(c) Indoor recreation project priority scoring system. If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, an application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further. A project proposal meeting the requirements of this paragraph shall be evaluated according to:

(1) whether or not the sponsor has a current department-approved master plan on file at the time of application and the extent to which the project will satisfy the priority indoor recreation needs identified in the master plan required by this section, up to a total of 15 points.

(A) for having a current department-approved master plan on file at the time of application submission 5 points;

(B) for satisfying 3 of the top 3 priority needs 10 points; and

(C) for satisfying 2 of the top 3 priority needs 6 points.

~~[(A) for satisfying priority need 1: 5 points;]~~

~~[(B) for satisfying priority need 2: 4 points;]~~

~~[(C) for satisfying priority need 3: 3 points;]~~

~~[(D) for satisfying priority need 4: 2 points;]~~

~~[(E) for satisfying priority need 5: 1 point.]~~

(2) the extent to which the project will provide diversity of public indoor recreation facilities or opportunities. Points shall be awarded based on the number of indoor recreation facilities provided. One point will be awarded for each type of recreation facility, up to a maximum of 10 points, provided that each recreation element is identified as a need in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Points may be deducted for projects which propose support facilities which do not support recreational activities.

(3) the extent to which the project will improve geographic distribution or innovative use of public indoor recreation facilities. Maximum of 20 points.

(A) project provides the first public indoor recreation facility in the sponsor's jurisdiction or intended service area: 20 points; or

(B) project provides significantly new and different public indoor recreation facilities (other than school facilities) in the sponsor's jurisdiction or intended service area, based on 5 points per opportunity, provided the individual recreation elements are identified as a need in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 15 points.

(4) the extent to which the project involves cooperation between the sponsor and other public or private entities to provide public indoor recreation facilities at the project site. Maximum of 20 points.

(A) project involves the contribution of resources, including publicly owned non-parkland, from sources other than the sponsor, which serves as all or part of the sponsor's matching share of funds. Maximum of 15 points. Points shall be awarded on a percentage basis, determined by dividing the total outside contribution value by the total match and multiplying the result by 15.

(B) project involves documented cooperation between the sponsor and other public or private entities and/or resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): 1 point per documented activity, to a maximum of 5 points.

(5) the extent to which the project provides for the renovation or adaptive reuse of an existing facility, determined by dividing the renovation cost by the total construction cost and multiplying the result by 25 [~~20~~]. Maximum of 25 [~~20~~] points.

(6) the extent to which the project improves public indoor recreation opportunities for low-income, minority, or elderly[~~, or youth-at-risk~~] citizens, up to a total of 15 [~~16~~] points.

(A) project improves opportunities for low-income citizens (defined as meeting any federal standard of eligibility for low-income status [~~by the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint~~]): determined by multiplying the percentage of population qualifying as low-income by 5 and dividing by 100 [4]. Maximum of 5 [4] points.

(B) project improves opportunities for minority citizens: determined by multiplying the percentage of population qualifying as minority by 5 and dividing by 100 [4]. Maximum of 5 [4] points.

(C) project improves opportunities for the elderly. Points for this item shall be awarded on the basis of recreational facility type and service or activity that is identified as a need for the special population in a locally adopted master plan or, if the sponsor does not have an adopted plan, by a documented public input process. Maximum of 5 and dividing by 100 [4] points.

~~[(D) project improves opportunities for youth-at-risk. One point is awarded for each program offered for youth-at-risk. Sponsor must describe/define the youth-at-risk population and demonstrate how facilities proposed in the application will be specifically programmed. Maximum of 4 points.]~~

(7) the extent to which the project promotes the environmentally responsible activities and development by the use of activities or techniques such as xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures. Points shall be awarded based on the diversity, innovative nature and/or cost of the project elements, up to a maximum of 10 points [~~One point is awarded for each conservation element proposed in the grant, up to a maximum of 5 points~~].

(8) the extent to which the project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Sponsor must address how the project meets the goals of the Plan in the proposal narrative. Up to a maximum of 5 points.

(9) sponsor is in compliance with previously funded projects. If sponsor is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(10) a complete application was received by the application deadline - 5 points will be awarded to the project score.

§61.135. Grants for Community [~~Outdoor~~] Outreach Outdoor Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for community outdoor outreach programs are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. In general, recommended priorities for community outdoor outreach projects are:

(1) to ensure sponsor compliance on previous grants;

(2) to improve community outdoor outreach opportunities for inner-city, rural, low-income, ethnic minority, female, physically/mentally challenged, and youth citizens;

(3) to reward partnerships between local sponsors and other organized groups;

(4) to increase the number of participants served;

(5) to maximize the use of funds for direct community outdoor outreach opportunities;

(6) to reward commitment of sponsor resources;

(7) to increase use of TPWD programs, personnel and facilities;

(8) to serve youth-at-risk;

(9) to promote activities related to TPWD initiatives;

(10) to promote outdoor educational activities; and

(11) to reduce priority of new funding for sponsors who have not fulfilled all previous grant reimbursement requirements.

(b) Community outdoor outreach program project priority scoring system.

(1) Community outdoor outreach projects shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) If the sponsor is in full compliance with previously assisted grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further.

(5) A project proposal meeting the requirements of paragraph (4) of this subsection shall be evaluated according to:

(A) Proposed project's primary constituency. Maximum of 12 points.

(i) inner city (city must have population of 100,000 or greater): 2 points, based on population figures of sponsor location (may be inner-city or rural or neither, but not both);

(ii) rural (cities or counties of 20,000 or less population: 2 points, based on population figures of sponsor location (may be inner-city or rural or neither, but not both);

(iii) ethnic minority (ethnic minorities within served population greater than or equal to 50% of total served population): 2 points;

(iv) female (females within served population greater than or equal to 50% of total served population): 2 points;

(v) low-income (defined as meeting any federal standard of eligibility for low-income status [~~as determined by the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint~~]) greater than or equal to 50% of total served population [~~(including participants on free and reduced lunch program):~~] 2 points;

(vi) physically/mentally challenged (includes ADD, ADHD, special education and must be stated in a number or percentage of total population served): 2 points;

(vii) youth must be stated in number or percentage served (age 17 and under) : 2 points.

(B) Proposed project encourages partnerships with organized groups. Application must include partnership letters from the partnering organization [~~current written and signed agreements between the project sponsor and the proposed partnership group~~]. Letters of endorsement [~~by themselves~~] will not receive credit. One point shall be awarded for each partnership agreement that commits cash contributions, volunteer labor, program materials, physical facilities use, transportation, food, etc. Letters must be current, dated, signed and state what the partners are providing to the program as well as the value of the contribution applicable. Maximum of 4 points.

(C) Number of program participants the proposed project will serve. One point awarded per 25 persons served, up to a maximum of 10 points.

(D) The extent to which the proposed project prioritizes direct service costs. Points shall be awarded on a percentage basis, determined by dividing the direct service delivery costs by the total project cost and multiplying the result by 10. Maximum of 10 points.

(E) The extent to which the sponsor's funds and resources are committed to the project. Points shall be awarded on a percentage basis, determined by dividing the local/sponsor funds by the total project cost and multiplying the result by 4. Sponsor must provide auditable proof of the contribution. Maximum of 4 points.

(F) The extent of the proposed project's direct relationship with TPWD programs and/or facilities. Maximum of 5 points. One point shall be awarded per instance of:

(i) TPWD facility used (must name each department facility [~~facility must be named~~]);

(ii) TPWD personnel involvement (must provide letter of coordination from TPWD staff); and/or

(iii) TPWD program provided (must identify each program).

(G) Project specifically serves at-risk youth. A definition of at-risk youth for the target audience must be included, as well as a description of each activity designed to serve at-risk youth. One point shall be awarded for each activity serving at-risk youth as defined in the

project (e.g., tutoring, mentoring, self-esteem building, career development, leadership development, etc.). Maximum of 3 points.

(H) Project proposes activities related to TPWD initiatives. One point shall be awarded for each proposed activity related to a TPWD initiative (e.g., fishing, camping, hunting, environmental education, or other outdoor activity). Maximum of 5 points.

(I) Project promotes outdoor educational activities. Each educational element must be demonstrated by a discussion of the educational goals and objectives to be employed as they pertain to outdoor/environmental education [~~curriculum to be employed~~]. Maximum of 4 points. Points will be awarded according to the curriculum's potential to increase participants':

(i) awareness;

(ii) knowledge, skills, and abilities;

(iii) critical thinking; and

(iv) behavioral change.

(J) Project includes an outdoor service project. Eligible service projects must be related to the department's mission. Projects must be described in detail and must include a partnership letter from the involved entities or organizations. Examples of eligible service projects include but are not limited to: trail or habitat restoration, planting native vegetation, wildlife monitoring, students mentoring students and building/distributing bird houses. Maximum of 3 points. Points will be awarded on the following criteria:

(i) environmental/conservation needs addressed by the proposed service project and how the proposed service project will address the needs identified in subparagraph (A) of this paragraph;

(ii) the direct involvement of youth in the planning and problem solving process; and

(iii) the prospective impact of the service project on youth and the community.

(K) [~~(J)~~] Applicant has fulfilled all previous community outdoor outreach grant reimbursement requirements. If no, deduct points from the application score determined by multiplying the remaining unspent grant balance by .0015 percent.

§61.136. [~~Grants for~~] Small Community Grant Programs.

(a) Program purpose and priorities. All grant applications submitted to the department for the small community grant program are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Scored applications are presented to the Texas Parks and Wildlife Commission for approval. In general, recommended priorities for small community projects are:

(1) to ensure sponsor performance on active grants and compliance at previously assisted grant sites;

(2) to reward the smallest communities;

[~~(3) to increase recreational diversity;~~]

(3) [~~(4)~~] to improve geographic distribution and innovative use of park and recreation opportunities;

(4) [~~(5)~~] to maximize the use of funds for basic park and recreation opportunities;

(5) [~~(6)~~] to improve park and recreation opportunities for low income, minority, and elderly[~~, and youth-at-risk~~] citizens;

(6) [~~(7)~~] to reward cooperative efforts between small communities and other governmental, educational, or private sector entities;

(7) [~~(8)~~] to renovate existing, obsolete park and recreation areas and facilities; [~~and~~]

(8) [~~(9)~~] to promote environmentally responsible activities and development; and

(9) to support the department's Land and Water Resources Conservation and Recreation Plan.

(b) Small communities project priority scoring system.

(1) Small community projects presented to the commission shall be scored according to the criteria, rating factors, and point values set forth in this subsection.

(2) The priority ranking of a project will depend on its score in relation to the scores of other projects under consideration.

(3) Funding of projects will depend on the availability of TRPA funds.

(4) Projects which have not been approved after two considerations by the commission, without alterations to significantly raise the project score, shall be returned to the sponsor and not accepted for resubmission.

(5) Each site of a multiple-site project shall be scored individually. Individual site scores will be weighted on a pro-rata share of the total budget for the entire project. All weighted scores will be added together for the total project score.

(6) If the sponsor is in full compliance at previously assisted grant project sites and is progressing on schedule with all active grant projects in accordance with the provisions of this subchapter, the application will be scored and presented for award consideration. If the sponsor does not meet the requirements of this paragraph, the application will not be scored or considered further.

(7) A project proposal meeting the requirements of paragraph (6) of this subsection shall be evaluated according to the extent that:

(A) the population of the sponsor is 2,500 [~~2,000~~] or less. Three [~~Two~~] points will be awarded if the community population is 2,500 [~~2,000~~] or less.

[~~(B) the project will provide diversity of park and recreation opportunities or facilities at the proposed site. One point will be awarded for each type of facility or opportunity, up to a maximum of three points.~~]

(B) [~~(C)~~] the project will improve the geographic distribution or innovative use of park and recreation lands and facilities in the project's service area or within the sponsor's jurisdiction, up to a maximum of 10 points.

(i) the project provides the first public park in the sponsor's jurisdiction or intended service area: 10 points; or

(ii) the project provides significantly new and different park and recreation opportunities (other than school facilities) at the project site. Points for this criteria will be awarded only if each recreation element is identified by a documented public input process [~~One point will be awarded for each facility or opportunity, based on the significance to the community and originality of opportunity, up to a maximum of five points~~].

(C) [~~(D)~~] the project maximizes the use of development funds for facilities which provide direct park and recreation opportu-

nities, up to a maximum of 10 points, as determined by dividing the direct recreational facilities costs by the total construction costs and multiplying the result by 10. "Total Facilities Costs" include park and recreation facilities, support and infrastructure facilities, contingency costs, and all required program signage costs in excess of $1,000.

(D) [~~(E)~~] the project improves park and recreation opportunities for low-income, minority, and elderly [~~and/or youth-at-risk~~] citizens, up to a maximum of 15 [~~16~~] points.

(i) the project improves opportunities for low-income citizens (defined as meeting any federal standard of eligibility for low-income status [~~by the "USDA National School Lunch Program Income Eligibility Guidelines" federal poverty definition midpoint~~]) as determined by multiplying the percentage of population qualifying as low income by five [~~four~~]. Maximum of five [~~four~~] points.

(ii) the project improves opportunities for minority citizens as determined by multiplying the percentage of population qualifying as minority by five [~~four~~]. Maximum of five [~~four~~] points.

(iii) the project improves opportunities for the elderly. One point is awarded for each facility or activity that is identified as a needed recreational opportunity for this special population by a documented public input process[~~, typically involving passive activities, except where facilities are designed specifically for an elderly user group~~]. Maximum of five [~~four~~] points.

~~*f(iv)* the project provides opportunities for youth-at-risk. One point is awarded for each program offered for youth-at-risk. Sponsor must describe/define the youth-at-risk population and demonstrate how facilities proposed in the application will be specifically programmed. Maximum of four points.]~~

(E) [~~(F)~~] the project involves documented cooperation between the sponsor and other public or private entities to provide park and recreation opportunities at the project site(s). Maximum of 10 points.

(i) the project involves the contribution of resources from sources other than the sponsor, including publicly owned nonparkland, which serves as all or part of the sponsor's matching share of funds. Up to five points may be awarded on a percentage basis, as determined by dividing the total outside contribution value by the total match and multiplying the result by five.

(ii) the project involves cooperation between the sponsor and other entities where resources are contributed to the overall project for non-grant assisted facilities (example: a county constructs roads/parking facilities for a city, but no grant funds are requested for roads/parking): one point per activity, up to a maximum of five points.

(F) [~~(G)~~] the project provides for the renovation of an existing obsolete park and recreation area or facilities, as determined by dividing the renovation cost by the total construction cost and multiplying the result by ten. Maximum of ten points.

(G) [~~(H)~~] the project promotes environmentally responsible activities and development through the use of activities or techniques such as xeriscape/native plant materials, drip or treated effluent irrigation systems, energy efficient lighting systems, recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist, alternative energy sources, water catchment systems, or other resource conservation measures. Points for this category will be awarded based on the diversity, innovative nature and/or cost of the project elements, up to a maximum of 5 points [~~One point is awarded for each conservation element proposed in the grant, up to a maximum of five points~~].

(H) project supports the department's Land and Water Resources Conservation and Recreation Plan (Plan). Sponsor must address how the project meets the goals of the Plan in the proposal narrative, up to a maximum of 2 points.

(I) sponsor is in compliance with previously funded projects. If sponsor is not in compliance with existing grant obligations, 5 points will be deducted from the project score.

(J) a complete application was received by the application deadline - 5 points will be awarded to the project score.

(K) sponsor is not in compliance with previously funded projects, if not, (-5) points will be deducted from the project score.

§61.138. Outdoor Urban Park Grants Program.

(a) Program purpose and priorities. All Urban Park Program Outdoor Recreation Grant Program applications are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Multiple-site projects are allowed and will be scored as one project. A project's priority ranking depends on its score in relation to the scores of other projects under consideration. Scored applications are presented to the Texas Parks and Wildlife Commission (Commission) for approval. Funding of projects will depend on the availability of funds.

(b) A project that has been considered twice by the Commission but not approved will not be considered again unless it has been significantly altered to raise the project score.

(c) Points will be awarded based on the compatibility of project elements with the scoring criteria in this subsection.

(1) Acquisition. The project proposes to acquire land that would satisfy one or more of the following:

(A) significant natural area. An area that is significant for a relatively undisturbed ecosystem that exhibits regionally representative geological, floral, faunal, or hydrological features and has the potential to serve regional or statewide recreation needs. Natural areas can serve as: greenbelts/open spaces; locations for passive activities; preservation areas for unique natural features; and interpretive sites which highlight or explain ecosystem processes - (1-4 points);

(B) green corridor/connectivity to existing protected areas - (1-4 points);

(C) pocket park. New parkland or additions to existing parkland in urban centers - (1-2 points);

(D) intensive-use recreation facility such as an athletic complex - (1-2 points);

(E) future conservation and recreation purposes that initially provide limited public access - (1-4 points);

(F) expansion of existing parks and conservation areas - (1-2 points);

(G) adaptive reuse for recreation or conservation of lands that have limited use in their existing state - (1 point); and

(H) proximity to areas of high population density - (1 point).

(2) Development. Project proposes development of one or more of the following:

(A) neighborhood park (1-3 points);

(B) nature center (natural-resource-based sites developed for outdoor recreation and education purposes such as trails,

wildlife viewing, interpretive signage, etc.) NOTE: Indoor facilities are not eligible under this program. (1-2 points);

(C) park and conservation area of regional significance (project is a component of a comprehensive or park and recreation master plan for 1 or more political jurisdictions) - (1-2 points);

(D) green construction/sustainability (1 point);

(E) multi-purpose recreation facility (1 point); and

(F) outdoor aquatic recreation (1 point).

(3) Restoration. Project provides for the renovation of existing recreation and conservation infrastructure that is no longer usable for its intended or original purpose:

(A) restoration of existing infrastructure. Points will be awarded based on percentage of the budget dedicated to the criterion - (1-10 points);

(B) wildlife habitat management (removal of invasive species or significant planting of native species resulting in the restoration of wildlife habitat). Points will be awarded based on percentage of the budget dedicated to the criterion - (1-10 points);

(C) adaptive reuse of existing structures and facilities to provide new or different recreation opportunities (use of an existing slab from a demolished building as a recreation court, the reuse of a bridge for recreation purposes, remediated brownfield, etc.). Points will be awarded based on the percentage of the total budget dedicated to the criterion - (1-5 points);

(4) Trails/Corridors/Greenways. Project proposes one or more of the following:

(A) major linear development (1 mile or longer) - (1-6 points);

(B) development that connects or extends an existing trail system or wildlife corridor - (1-5 points);

(C) major loop development (1 mile or more) - (1-4 points);

(D) neighborhood/loop trail development - (1-4 points);

(E) off-road trail development for non-motorized use - (1-2 points);

(F) aquatic paddling trail development - (1-2 points);

(G) interpretive nature trail development - (1-2 points);

(5) Sports Facilities. Project proposes the development of one or more of the following:

(A) large capacity, intensive-use sports facility - (7 points);

(B) competition or practice facilities in close proximity to users (3 points);

(6) Underserved Populations. Project provides for one or more of the following:

(A) more equitable geographic distribution of facilities. Project proposal shall include a map showing the locations of existing parks in the sponsor's entire service area to justify additional facility - (4 points);

(B) improved park or recreation opportunities for low-income citizens. Project proposal must include an economic analysis of the relevant population demographics of the service area - (2 points);

(C) improved park or recreation opportunities for minority citizens. Project proposal must include a demographic analysis of the target population within the service area - (2 points);

(D) improved park or recreation opportunities for elderly citizens. Project proposal must demonstrate compatibility with the sponsor's master plan or public input process - (2 points);

(7) Joint ventures/partnerships. Project involves public-public or public-private cooperation (award is based on the percentage of the total budget contributed by partners; however, points are awarded based on all partners and not solely on the partners making a monetary contribution). The role of each partner must be explained. Application must include a partnership letter from each partnering organization or a current written and signed agreement between the project sponsor and each proposed partnership group. Partnerships that are programming-only will not be awarded. 1-5 points may be awarded on the basis of the number of partners, as follows:

(A) three partners - (1 point);

(B) four partners (2 points); or

(C) five or more partners (3 points).

(8) Master plan. Points will be awarded for planning, as follows:

(A) project sponsor has a locally adopted and department-approved parks, recreation and open space master plan that addresses outdoor recreation needs - (5 points);

(B) project satisfies 3 of the top 3 priority needs - 10 points;

(C) project satisfies 2 of the top 3 priority needs - 6 points; or

(D) project satisfies 1 of the top 3 priority needs - 3 points.

(9) Threat. Project reduces the threat to the public availability of a conservation or recreation opportunity. The project narrative must include a discussion of the particular compelling circumstances involving the project, such as imminent loss of opportunity, time-sensitive economic factors (i.e. loss of potential funding partner if action is not undertaken quickly), a significant safety hazard, or needed restoration (without which the facility could be deemed unusable.) Basic maintenance is not an eligible expense.

(A) no evidence of threat is presented - (0 points);

(B) minimal threat; the conservation or recreation opportunity appears to be in no immediate danger of loss in the next 36 months - (1 point);

(C) action in progress that could result in the conservation or recreation opportunity becoming unavailable for public use - (2 points); and

(D) action in progress that will result in the conservation or recreation opportunity becoming unavailable for future public use or a threat situation has occurred or is imminent that will result in the acquisition of rights to the land by a land trust at the request of the applicant - (3 points).

(10) Historical/cultural resource. Project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural, natural, historical or archaeological resources by means of interpretation, facilities, or preservation strategies - (2 points).

(11) Consistency with Land and Water Conservation Plan (up to 10 points). Sponsor must specifically describe how the project meets the goals of the Land and Water Conservation Plan.

(12) Compliance.

(A) sponsor is not in compliance with previously funded projects - (5 points deducted from total score).

(B) complete application received by the application deadline - (5 points).

(13) Urban biologist consultation. Applicant has consulted with an urban biologist from the department regarding the proposed site plan at least 30 days prior to the application deadline and the biologist's comments are included in the application materials - (5 points).

§61.139. Indoor Urban Park Grants Program.

(a) Program purpose and priorities. All Urban Park Program Indoor Recreation Grant Program applications are evaluated for program eligibility and prioritized according to the Project Priority Scoring System set forth in this section. Multiple-site projects are allowed and will be scored as one project. Individual site scores will be weighted on a pro-rata share of the total project score. A project's priority ranking depends on its score in relation to the scores of other projects under consideration. Scored applications are presented to the Texas Parks and Wildlife Commission (Commission) for approval. Funding of projects will depend on the availability of funds.

(b) A project that has been considered twice by the Commission but not approved will not be considered again unless it has been significantly altered to raise the project score.

(c) Points will be awarded based on the compatibility of project elements with the scoring criteria in this subsection.

(1) Development. Project proposes development of one or more of the following:

(A) nature center that provides natural resource conservation or environmental education visitor experiences - (5 points);

(B) green construction/sustainability - (1 point);

(C) multi-purpose recreation facilities - (1 point);

(D) diverse recreation facilities within the sponsor's jurisdiction - (one point will be awarded for each type of significant recreation opportunity, up to 3 points);

(2) Restoration. Project provides for the renovation of existing recreation and conservation infrastructure that is no longer usable for its intended or original purpose (renewal or revival of existing facilities. Basic maintenance is not an eligible expense);

(A) restoration of an existing structure. Points will be awarded based on percentage of the budget dedicated to restoration - (1-15 points);

(B) adaptive reuse of existing structure or facility to provide new or different recreation opportunities (Points will be awarded based on the percentage of the budget dedicated to the adaptive reuse) - (1-10 points);

(3) Underserved populations. Project provides for one or more of the following:

(A) more equitable geographic distribution of facilities. Project proposal shall include a map showing the locations of existing parks in the sponsor's entire service area to justify additional facility - (4 points);

(B) improved park or recreation opportunities for low-income citizens. Project proposal must include an economic analysis of the relevant population demographics of the service area - (2 points);

(C) improved park or recreation opportunities for minority citizens. Project proposal must include a demographic analysis of the target population within the service area - (2 points);

(D) improved park or recreation opportunities for elderly citizens. Project proposal must demonstrate compatibility with the sponsor's master plan or public input process - (2 points);

(4) Joint efforts/partnerships. Project involves public-public or public-private cooperation (award is based on the percentage of the total budget contributed by partners; however, points are awarded based on all partners and not solely on the partners making a monetary contribution). The role of each partner must be explained. Application must include a partnership letter from each partnering organization or a current written and signed agreement between the project sponsor and each proposed partnership group. Partnerships that are programming-only will not be awarded. 1-3 points may be awarded on the basis of the number of partners, as follows:

(A) three partners - (1 point);

(B) four partners (2 points); or

(C) five or more partners (3 points).

(5) Master plan. Points will be awarded for planning, as follows:

(A) project sponsor has a locally adopted and department-approved parks, recreation and open space master plan that addresses outdoor recreation needs - (5 points);

(B) project satisfies 3 of the top 3 priority needs - 10 points;

(C) project satisfies 2 of the top 3 priority needs - 6 points; or

(D) project satisfies 1 of the top 3 priority needs - 3 points.

(6) Threat. Project reduces the threat to the public availability of a recreation opportunity. The project narrative must include a discussion of the particular compelling circumstances involving the project, such as imminent loss of opportunity, time-sensitive economic factors (i.e. loss of potential funding partner if action is not undertaken quickly), a significant safety hazard, or needed restoration (without which the facility could be deemed unusable.) Basic maintenance is not an eligible expense.

(A) no evidence of threat is presented - (0 points);

(B) minimal threat; the recreation opportunity appears to be in no immediate danger of loss in the next 36 months - (1 point);

(C) action in progress that could result in the recreation opportunity becoming unavailable for public use - (2 points); and

(D) action in progress that will result in the recreation opportunity becoming unavailable for future public use or a threat situation has occurred or is imminent that will result in the acquisition of rights to the land by a land trust at the request of the applicant - (3 points).

(7) Historical/cultural resource. Project provides park and recreation opportunities that enhance and encourage appreciation and preservation of site-based cultural, natural, historical or archaeological resources by means of interpretation, facilities, or preservation strategies - (2 points).

(8) Consistency with Land and Water Conservation Plan (up to 10 points). Sponsor must specifically describe how the project meets the goals of the Land and Water Conservation Plan.

(9) Compliance.

(A) sponsor is not in compliance with previously funded projects - (5 points deducted from total score).

(B) complete application received by the application deadline - (5 points).

(10) Urban biologist consultation. Applicant has consulted with an urban biologist from the department regarding the proposed site plan at least 30 days prior to the application deadline and the biologist's comments are included in the application materials - (5 points).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706247
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER Q. STATEWIDE FURBEARING ANIMAL PROCLAMATION

31 TAC §65.375

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.375, concerning the Statewide Furbearing Animal Proclamation. The proposed amendment would extend the commercial trapping season for beaver, alter terminology to replace the term "leghold" with the term "foothold," and make a nonsubstantive grammatical correction.

The current commercial trapping season for beaver runs from November 1 through March 31. The department received a petition for rulemaking requesting that the commercial season be lengthened to run from September 1 through May 31. The department has determined that beaver are common and found in appropriate habitats throughout Texas. Bridge survey counts reveal beavers at all surveyed bridge locations in the 26 eastern counties where the survey is conducted, indicating the population is relatively widespread. Extending the season will allow trappers and fur harvesters to extract more value from the resource and will not result in waste or depletion of the resource.

The current rule employs the term "leghold" to identify a type of device used to capture furbearing animals. The department received a petition for rulemaking requesting that the term be replaced with the term "foothold." The proposed amendment would effect that change, which is nonsubstantive.

The text of subsection (c)(2)(D) is not structurally parallel with the other subparagraphs in the paragraph. The proposed amendment nonsubstantively corrects that problem.

Robert Macdonald, Regulations Coordinator, has determined that for each year of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be additional opportunity for commercial harvest of beaver and accurate regulatory terminology.

The department has determined that small or micro businesses might be affected by the proposed rule, and that the projected economic impact of the proposed rule on these small or micro businesses will be neutral or positive. The proposed rule would create additional opportunity for commercial harvest of beaver. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to John Young, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 912-7047 (e-mail: john.young@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, and to provide for permit application forms, fees, procedures, and reports.

The proposed amendment affects Parks and Wildlife Code, Chapter 71.

§65.375. Open Seasons; Means and Methods.

(a) (No change.)

(b) Commercial harvest.

(1) Except as provided in this subsection, the [~~The~~] open season for the commercial harvest of fur-bearing animals is November 1 of one year through March 31 of the following year.

(2) The commercial season for nutria is [~~Nutria may be taken from~~] September 1 through August 31 of the following year.

(3) The commercial season for beaver is October 1 of one year through May 31 of the following year.

(4) [~~(2)~~] There are no bag or possession limits during the commercial season.

(c) Means and methods.

(1) Only the following means and methods are legal for taking fur-bearing animals:

(A) (No change.)

(B) steel foothold [~~leghold~~] and conibear-style traps;

(C) - (I) (No change.)

(2) Exceptions. No person may:

(A) - (C) (No change.)

(D) use a conibear-style trap with a diagonal opening dimension greater than ten inches [~~shall not be~~] set on land or in less than six inches of water;

(E) use snares, steel foothold [~~leghold~~] traps, conibear-style traps, and live or box traps unless each trap is examined at least every 36 hours; or

(F) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts proposes an amendment to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. This section is being amended to implement Senate Bill 377, 80th Legislature, 2007, to clarify application of Senate Bill 640, 77th Legislature, 2001, to delete reference to the state treasurer's office and to reflect current agency policy. Pursuant to Senate Bill 377, effective June 15, 2007, Tax Code, §111.0625 is amended to allow the comptroller by rule to require taxpayers who paid $10,000 or more during the preceding fiscal year in specific categories of payments to transfer payments in those categories by means of electronic funds transfer if it is reasonably anticipated that they will pay at least that amount during the current fiscal year. Subsection (b)(2) was added to require payments by electronic funds transfer from taxpayers who paid more than $10,000, but less than $100,000, in a single category of payments or taxes in the preceding fiscal year; to list the categories of payments or taxes to which this requirement applies; to state the comptroller's authority to add or remove a category of payments from this requirement; to indicate the comptroller's authority to specify the methods of electronic funds transfers that may be used; and to provide a means for taxpayers to request waiver of the requirement. Pursuant to Senate Bill 377, effective September 1, 2008, Tax Code, §111.0626 is amended to allow the comptroller by rule to require a taxpayer who paid $50,000 or more during the preceding fiscal year to file reports electronically. Subsection (c)(1) is being amended to reflect this statutory change and to indicate that such reports will be due upon proper notification to taxpayers by the comptroller. Subsection (a)(1) is being amended to reflect agency policy that authorization for electronic filing of returns and reports does not require a written agreement, but requires either registration or a comptroller-issued password or PIN. Subsection (d) is being amended to delete reference to the state treasurer's office, whose functions were absorbed by the comptroller in 1996 pursuant to Senate Bill 20, 74th Legislature, 1995. Subsection (g) is being amended to clarify that Tax Code, §111.063, as amended by Senate Bill 640, 77th Legislature, 2001, allows the comptroller to impose a 5.0% penalty for failure to pay by electronic funds transfer, when required, as well as for failure to electronically report under Tax Code, §111.0626.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by further streamlining the collection of state taxes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§111.0625, 111.0626, 111.063.

§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.

(a) Electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2, by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered [~~entered into a written agreement~~] with the comptroller, or has been authorized by the comptroller through the issuance of a password or personal identification number (PIN) to [~~that permits the taxpayer to~~] use an [~~the~~] electronic method of filing returns and reports[~~. The signature of the taxpayer or its authorized agent on the written agreement into which the parties have entered for this purpose shall be deemed to appear on each report or return that is filed electronically with the comptroller as if actually included on the report or return~~]; and

(2) the method of electronic transmission of each return or report shall be made in a manner compatible with the comptroller's equipment and facilities.

(b) Electronic transfer of certain payments by certain taxpayers.

[~~(1) For payments that are due before January 1, 2002, the comptroller, pursuant to Government Code, §404.095(c), shall require~~

~~persons who have paid the comptroller a total of $250,000 or more in a single category of payments or taxes during the preceding state fiscal year to transfer all payment amounts in that category of payments or taxes to the comptroller by means of electronic funds transfer.~~]

(1) [~~(2)~~] For payments that are due on or after January 1, 2002, the comptroller, pursuant to Tax Code, §111.0625, shall require taxpayers who have paid the comptroller a total of $100,000 or more in a single category of payments or taxes during the preceding state fiscal year to transfer all payment amounts in that category of payments or taxes to the comptroller by means of electronic funds transfer.

(2) Electronic transfer of amounts under $100,000 in certain categories.

(A) For payments that are due on or after May 1, 2008, the comptroller, pursuant to Tax Code, §111.0625, shall require taxpayers who paid at least $10,000, but less than $100,000, in a single category of payments or taxes described in this paragraph during the preceding state fiscal year to transfer all payments in that category of payments or taxes to the comptroller by means of electronic funds transfer if the comptroller reasonably anticipates the taxpayer will pay at least that amount during the current fiscal year. This paragraph applies only to:

(i) state and local sales and use taxes;

(ii) direct payment sales taxes;

(iii) gas severance taxes;

(iv) oil severance taxes;

(v) franchise taxes;

(vi) gasoline taxes;

(vii) diesel fuel taxes;

(viii) hotel occupancy taxes;

(ix) insurance premium taxes;

(x) mixed beverage gross receipts taxes;

(xi) motor vehicle rental taxes; and

(xii) telecommunications infrastructure fund assessments.

(B) The comptroller may add or remove a category of payments from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include TEXNET, electronic check (WebEFT) and the electronic transmission of credit card information. The comptroller may authorize additional methods as technology evolves. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer who is required to pay by electronic funds transfer under this paragraph who cannot comply due to hardship, impracticality or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(E) Except as provided in subsection (d) of this section, for persons using TEXNET, a person making a payment by other electronic funds transfer methods approved by the comptroller must transmit payment information by 11:59 p.m. central time on the date payment is due.

(c) Electronic filing of reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626.

(A) Pursuant to Tax Code, §111.0626(a), taxpayers who are required by Tax Code, §111.0625, to use electronic funds transfer for tax payments that are made under Tax Code, Chapters 151, 201, 202, and the International Fuel Tax Agreement must also file report data electronically. This requirement applies to report data that is due on or after January 1, 2002.

(B) Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid $50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application or software provided by the comptroller or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph applies to reports due on or after September 1, 2008, but only after issuance to the taxpayer of the 60 days notice required by subsection (e) of this section.

(2) Reports by wholesalers and distributors of beer, wine, or malt liquor. Pursuant to Tax Code, §151.433, each wholesaler or distributor of beer, wine, or malt liquor shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code;

(ii) the comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the permit or license number assigned to the retailer by the Texas Alcoholic Beverage Commission;

(iv) the monthly net sales made to the retailer by outlet, including the quantity and units of beer, wine, and malt liquor sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) If a person fails to file a report required by this subsection or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Tax Code, §151.203, and may impose a civil or criminal penalty, or both, under Tax Code, §151.7031 or §151.709.

(C) If a person fails to file a report required by this subsection or fails to file a complete report, the comptroller may notify the Texas Alcoholic Beverage Commission of the failure and the commission may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(D) This requirement applies to sales occurring on or after January 1, 2008.

(E) A report required by paragraph (2) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212, each wholesaler or distributor of cigarettes shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes, including city and zip code;

(ii) the comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(iv) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) This requirement applies to sales occurring on or after January 1, 2008.

(C) A report required by paragraph (3) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105, each wholesaler or distributor of cigars or tobacco products shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products, including the city and zip code;

(ii) the comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(iv) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) This requirement applies to sales occurring on or after January 1, 2008.

(C) A report required by paragraph (4) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.

(5) Except as provided by Tax Code, §111.006, information contained in the reports required by paragraphs (2), (3) and (4) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552.

(6) The reports required by paragraphs (2), (3) and (4) of this subsection are required in addition to any other reports required by the comptroller.

(d) Applicability of other [~~the state treasurer's~~] administrative rules. The administrative rules [~~of the former state treasurer's office~~] on electronic funds transfer found in Chapters 15 and 16 [~~, §§15.2, 15.4 - 15.15, 15.17, and 16.1~~] of this title [~~(relating to Penalties, Protested Tax Payments, State Agency Rules Requirements, Applicability Determination and Notification Procedures, Voluntary Payments by Electronic Funds Transfer, Payor Information, Means of Electronic Funds Transfer, Transmission of Payment Information, Determination of Settlement Day, Transfer of Funds to the Treasury, Backup Procedures, Late Payments, Proof of Payment, Effective Date, and Adoption by Reference),~~] shall be applicable to all such payments to the comptroller.

(1) Pursuant to §15.11 of this title (relating to Determination of Settlement Day), a person who enters payment information into the applicable electronic fund transfer (EFT) system may choose to either accept the settlement day that the EFT system offers or enter a settlement day up to 30 days in the future. The EFT system will offer the business day following the day on which payment information is entered into the EFT system, provided that the information is entered by 6:00 p.m. central time on any day other than a weekend or banking holiday.

(2) A person who files combined tax returns and makes payments through the electronic data interchange (EDI) system must enter the payment information into the EDI system by 2:30 p.m. central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection.

(e) Notification of affected persons. With the exception of persons affected by subsection (c)(2), (3) or (4) of this section, the comptroller shall notify taxpayers who are affected by this section no less than 60 days before the first required electronic transmittal of report data or payment.

(f) A taxpayer who is required to electronically file report data under subsection (c)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (c)(2), (3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(g) Pursuant to Tax Code, §111.063, the comptroller may impose separate penalties [~~a penalty~~] of 5.0% of the tax due for failure to pay by electronic funds transfer, as required by this section or failure to electronically file a report under Tax Code, §111.0626.

(h) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051, must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment and are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. This exception to the electronic funds transfer requirement is allowed if a written statement of protest accompanies the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery actually received at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706251
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-0387

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SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.291

The Comptroller of Public Accounts proposes an amendment to §3.291, concerning contractors, to implement House Bill 3319, 80th Legislature, 2007. House Bill 3319 requires that contractors who both manufacture concrete for construction purposes and incorporate that concrete into realty (i.e., a ready mix concrete contractor) must separately state the price of the concrete from any other charges associated with the contract. The ready mix concrete contractor is also required to collect and remit the tax due on the higher of the invoice price or fair market value. These amendments are reflected in new subsections (a)(10) and (b)(3)(E). Subsection (b)(10) is amended to more clearly explain local tax reporting requirements for contractors who improve real property of nonexempt customers. Other nonsubstantive changes are made for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the requirements for certain taxpayers subject to the sales tax. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.056(g).

§3.291. Contractors.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agreed contract price of materials incorporated into the realty--The price specified in the contract for the incorporated materials, i.e., tangible personal property that becomes a part of the real property, plus any additional charges directly attributable to the incorporated materials. For example, profit that is calculated as a percentage of the cost of materials, cost of transportation of the materials, and markup or handling charges that relate directly to the materials charge are included in the agreed contract price. A charge that is calculated as a percentage of the total contract cost is not considered a part of the agreed contract price of materials incorporated into realty. The agreed contract price of incorporated materials cannot be less than the price that the contractor paid for the materials.

(2) Consumable item--Nondurable tangible personal property that is used to improve realty and, after being used once for its intended purpose, is completely used up or destroyed. Examples of consumable items are nonreusable concrete forms, nonreusable drop cloths, barricade tape, natural gas, and electricity. The term "consumable item" does not include machinery, equipment, accessories to machinery or equipment, repair or replacement parts for machinery or equipment, or any rented or leased item.

(3) Contractor--Any person who builds new improvements to residential or nonresidential real property, completes any part of an uncompleted new structure that is an improvement to residential or nonresidential real property, makes improvements to real property as part of periodic and scheduled maintenance of nonresidential real property, or repairs, restores, maintains, or remodels residential real property, and who, in making the improvement, incorporates tangible personal property into the real property that is improved. The term includes subcontractors but does not include material men, suppliers, or persons who provide taxable real property services. Persons who provide real property services should refer to §3.356 of this title (relating to Real Property Service). Persons who repair, restore, or remodel nonresidential real property are providing taxable services and should refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). Persons who repair, restore, or remodel chemical plants or petrochemical refineries should refer to §3.362 of this title (relating to Labor Relating to Increasing Capacity in a Production Unit in a Petrochemical Refinery or Chemical Plant).

(4) Equipment--Tangible personal property that a contractor uses [~~and~~] that is not a consumable item or an incorporated material. Examples include tools, machinery, implements, and [~~the~~] accessories and repair or replacement parts for the equipment.

(5) Exempt contract--A contract for the improvement of real property with an entity that is exempted under Tax Code, §151.309

or §151.310. An example of an exempt contract is a contract with a nonexempt entity to improve real property for the primary use and benefit of an organization exempted under Tax Code, §151.309 or §151.310, provided that the improvements relate to the exempt purpose of an organization that is exempted under Tax Code, §151.310(a)(1) or (a)(2). Another example is a contract for development work covered under [~~that~~] subsection (d) of this section [~~covers~~]. See §3.322 of this title (relating to Exempt Organizations).

(6) Improvements to realty--See §3.347 of this title (relating to Improvements to Realty).

(7) Incorporated materials--Tangible personal property that becomes a part of any building or other structure, project, development, or other permanent improvement on or to such real property including tangible personal property that, after installation, becomes real property by virtue of being embedded in or permanently affixed to the land or structure constituting realty and which property after installation is necessary to the intended usefulness of the building or other structure.

(8) Lump-sum contract--A contract in which the agreed contract price is one lump-sum amount and in which the charges for incorporated materials are not separate from any charges for skill and labor, including fabrication, installation, and other labor that the contractor performs. For example, guaranteed-maximum contracts are considered lump-sum contracts when the charges for incorporated materials and the charges for skill and all labor are not separately stated. Contracts to improve realty that do not break out all charges for labor, including fabrication labor, are considered lump-sum contracts. For example, a contractor who fabricates and incorporates cabinets into realty under a contract that includes the fabrication labor in the agreed contract price of materials is a lump-sum contractor. Contracts to improve realty that have a zero charge for materials or for labor are considered lump-sum contracts. Separated invoices issued to the customer will not change a lump-sum contract into a separated contract unless the terms of the contract require separated invoices.

(9) New construction--All new improvements to real property, including initial finish-out work to the interior or exterior of the improvement. An example is a multiple story building that has had only its first floor finished and occupied. The initial finish-out of each additional floor before initial occupancy or use is new construction. New construction also includes the addition of new usable square footage to an existing building. Examples include the addition of a new wing onto an existing building [~~or the addition of a new mezzanine level within an existing building~~]. Reallocation of existing square footage inside a building is remodeling and does not constitute the addition of new square footage. For example, the removal or relocation of interior walls to expand the size of a room or the finish out of an office space that was previously used for storage is remodeling. Raising the ceiling of a room or the roof of a building is not new construction if new usable square footage is not created.

(10) Ready mix concrete contractor--A contractor who manufactures or produces concrete for construction purposes and incorporates the concrete into the property improved.

(11) [~~(10)~~] Sale and installation of tangible personal property--Includes a contract to furnish and install machinery, equipment, or other tangible property that is not essential to the building or structure, nor adapted or intended to become a part of the realty, but which incidentally may, on account of its nature, be temporarily attached to the realty without loss of its identity as a particular piece of machinery, equipment, or property and, if attached, is readily removable without substantial damage to the unit or realty or without destruction of the intended usefulness of the realty.

(12) [~~(11)~~] Residence or residential property--Property that is used as a family dwelling, a multifamily apartment or housing complex, nursing home, condominium, or retirement home. The term includes homeowners association-owned and apartment-owned swimming pools that are for the use of the homeowners or tenants, laundry rooms for tenants' use, and other common areas for tenants' use. The term does not include hotels or any other facilities that are subject to the hotel occupancy tax.

(13) [~~(12)~~] Separated contract--A contract in which the agreed contract price is divided into a separately stated agreed contract price for incorporated materials and a separately stated amount for all skill and labor that includes fabrication, installation, and other labor that is performed by the contractor . If prices of incorporated materials and labor are separately stated in any part of the contract or in a document that becomes part of the contract according to the terms of the contract, adding the charges together to give a sum total does not change the contract into a lump-sum contract. For example, a contract that requires separated invoices is a separated contract. Cost-plus contracts are considered separated contracts if the cost of labor is separately stated from the cost for incorporated materials.

(b) Tax responsibilities of contractors who improve real property of nonexempt customers.

(1) Equipment. A contractor must pay sales tax at the time of purchase, lease, or rental on the sales price of equipment used to perform a contract. A contractor must accrue and remit use tax on the sales price of equipment purchased, leased, or rented for use in Texas from an out-of-state seller unless the out-of-state seller collected Texas use tax. See §3.346 of this title (relating to Use Tax). Texas allows a credit against Texas use tax when the same property is subject to a legally imposed sales or use tax of another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(2) Consumable item. Except as provided by subparagraph (B) of this paragraph, a contractor must pay tax at the time of purchase on consumable items that are not physically incorporated into the customer's property.

(A) A contractor may not collect tax from the customer on a charge for consumable items except as provided by subparagraph (B) of this paragraph.

(B) A contractor who has a separated contract may issue a properly completed resale certificate to a supplier in lieu of tax for consumable items if title to the consumable items transfers to the contractor's customer at or before the time that the contractor takes possession of the consumable items, and further if the consumable items are immediately marked, labeled, or otherwise physically identified as the customer's property, when practicable. The contractor must separately state the charge for these consumable items to the customer and must collect sales tax from the customer, unless the customer qualifies for exemption under Tax Code, §151.309 or §151.310, or under other provisions that grant the customer exemption from sales tax on its purchases. See §3.322 of this title (relating to Exempt Organizations).

(3) Lump-sum contracts.

(A) A contractor who performs lump-sum contracts owes tax on all materials, consumable items, equipment, taxable services, and other taxable items that are used by the contractor or incorporated into a customer's property. The contractor must pay tax to suppliers when the contractor purchases, leases, or rents the taxable items. The contractor must accrue and remit use tax on taxable items that are purchased, leased, or rented from an out-of-state seller unless the out-of-state seller collected and gave the contractor a receipt for

Texas use tax. The contractor shall not collect from a customer any amount represented to be tax on a lump-sum charge or on any portion of the charge except as provided under subparagraph (E) of this paragraph. A lump-sum contractor must refund to the customer any tax that is collected in error or the contractor must remit the tax to the state. The contractor may not retain such tax. [See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) for a discussion of "tax included" charges and contracts.]

(B) A contractor who, in addition to performing lump-sum contracts, sells, leases, or rents taxable items at retail [over the counter] or performs separated contracts may maintain a tax-free inventory of items that are held for resale. A contractor who, in addition to performing lump-sum contracts, performs nonresidential real property repair, restoration, and remodeling services and resells taxable items as part of those taxable services may also maintain a tax-free inventory of items that are held for resale. See §3.357 of this title (relating to [Labor Relating to] Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property[,] Maintenance[, New Construction, and Residential Property]). A contractor may issue a properly completed resale certificate instead of paying tax on items that are purchased for a tax-free inventory when the contractor does not know at the time of purchase whether the item will be resold or used in the performance of a lump-sum contract. A contractor must hold a sales tax permit to issue a resale certificate, and must collect, report, and remit tax to the comptroller as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) when the contractor sells, leases, or rents taxable items. A contractor who separately states a charge for equipment that the contractor uses is not renting that equipment to the customer.

(C) A contractor who purchases taxable items under a valid resale certificate and uses the items in a taxable manner owes sales or use tax on the items. For example, a contractor who incorporates materials from a tax-free resale inventory into realty under a lump-sum contract must accrue and remit tax based on the purchase price of the materials. The contractor must remit the tax to the comptroller for the reporting period in which the materials were used. A contractor who purchases items that are specifically intended for use in a lump-sum contract may not issue resale certificates in lieu of tax for such items. See §3.285 of this title (relating to Resale Certificates; Sales for Resale). [For city, county, and special purpose district taxes, see §3.377 of this title (relating to Divergent Use of a Direct Payment, Resale or Exemption Certificate) and for transit taxes see §3.427 of this title (relating to Divergent Use of a Direct Payment, Resale, or Exemption Certificate).]

(D) A contractor may not accept a direct payment exemption certificate when the contractor performs a lump-sum contract for a person who holds a direct payment permit. The lump-sum contractor owes tax on all taxable items that are used on the job or that are incorporated into the direct payment permit holder's realty. A direct payment permit holder may not authorize a contractor or any other person to purchase tax free any taxable item through use of the direct payment permit holder's permit. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(E) A ready mix concrete contractor must separate the charge for the concrete from other charges associated with the contract, and invoice the customer for each yard of concrete produced and consumed for the improvement of real property. The ready mix concrete contractor must collect and remit the tax due on the concrete produced and consumed. The tax rate in effect at the job site location is applied to the greater of the actual invoice price of the component materials or the fair market value of the concrete incorporated into the project. For the purposes of this paragraph, fair market value is the amount that a purchaser would pay on the open market for concrete. The fair market value will be determined on a case by case basis, taking into consideration relevant factors such as cost of component materials, location of job site, volume, and prices charged by other concrete contractors in the area. Contracts entered into prior to September 1, 2007, are excluded from the requirements of this subparagraph provided the contract terms do not allow for the pass-through of taxes by the ready mix concrete contractor to the purchaser for the duration of the contract period. This subparagraph does not apply to ready mix concrete contractors providing concrete for a public works project.

(4) Separated contracts.

(A) Except as otherwise provided in this section, a contractor who performs a separated contract is a retailer of all materials that are physically incorporated into the realty that is being improved. As a retailer, the contractor must collect tax from the customer based upon the agreed contract price of the incorporated materials. The tax rate must be applied to the agreed contract price of materials, or to the price of the materials to the contractor, whichever is greater. A contractor who performs a separated contract is also a retailer of taxable services that are sold under the provisions of subparagraph (D) of this paragraph, and of consumable items that are sold under the provisions of paragraph (2)(B) of this subsection. The contractor may accept a properly completed resale or exemption certificate from a customer who claims an exemption. [See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) for a discussion of "tax included" charges and contracts.]

(B) A contractor who performs a separated contract must hold a sales tax permit and collect, report, and remit the tax as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). A contractor who purchases taxable items for resale as part of a separated contract may issue resale certificates to suppliers in lieu of tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). A contractor may not issue [give] a resale certificate and must pay tax on the purchase, rental, or lease of equipment that is intended for use in the performance of a contract.

(C) A contractor may maintain a tax-paid inventory of materials. If the contractor incorporates tax-paid materials into realty under a separated contract or sells them at retail [over the counter] or transfers the materials to a customer as part of a taxable service, then the contractor must collect tax from the customer based upon the agreed contract price of the materials or upon the sales price of the taxable service. The contractor may claim a credit for tax paid on materials resold to customers. The contractor must remit tax to the comptroller on any difference that exists between the price that the customer paid and the price that the contractor paid. [See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).]

(D) A contractor who performs separated contracts may issue properly completed resale certificates in lieu of tax on taxable services that the contractor resells to its customers. Examples include landscaping, surveying, security services (alarm systems), that are incorporated into the customer's realty [(alarm systems)], and the final clean-up (janitorial services) of the construction site. The charges for taxable services that are resold to the customer must be separated from the charges for incorporated materials and other charges, and the contractor must collect tax from the customer on charges for the taxable services and incorporated materials. A contractor who performs a separated contract may not issue a resale certificate for a taxable service that the contractor uses or consumes, such as a security service to secure the job site, telecommunication service, and daily clean-up (janitorial service or garbage collection and removal) of the construction site. A contractor who performs residential new construction should refer to paragraph (7) of this subsection.

(E) A contractor who improves realty for a direct payment permit holder may accept a properly completed direct payment exemption certificate in lieu of tax on all tangible personal property that is incorporated into the direct payment permit holder's realty. The contractor owes tax on equipment the contractor purchases, rents, or leases for use in the performance of the contract with a direct payment permit holder. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). A contractor who performs a separated contract may not accept a direct payment exemption certificate in lieu of tax on consumable items unless paragraph (2)(B) of this subsection applies. A contractor who performs a separated contract may accept a direct payment exemption certificate in lieu of tax on taxable services only under the circumstances set out in paragraph (4)(D) of this subsection.

(5) Contracts versus bids and change orders. For tax purposes, the terms of a contract control over the terms of a bid. For example, if the bid is lump-sum but the written contract is separated, then the contract determines the tax responsibilities of the parties, and the customer is liable for tax on incorporated materials. The terms of a contract also control change orders. If the contract is lump-sum, then change orders will be treated as lump-sum even if the change orders show charges for incorporated materials separate from other charges. If the contract is separated and change orders are for lump-sum amounts, then the lump-sum amounts will be treated as charges for incorporated materials unless the contractor can reasonably demonstrate the portion attributable to labor.

(6) Different types of contracts between contractors and subcontractors. For tax purposes, subcontractors are not required to use the same type of contract as the general contractor. For example, a general or prime contract may be lump-sum, while some or all subcontracts may be separated. Each subcontractor's individual contract governs the subcontractor's tax responsibilities. In the example given, the subcontractors with separated contracts must collect sales tax from the general contractor. The general contractor must not collect any tax from the general contractor's customer. When the general or prime contract separately states labor and incorporated materials but some of the subcontracts are lump-sum, the prime or general contractor should treat the lump-sum charges as part of its separately stated labor charge and should not collect tax from the prime contractor's customer on those charges from lump-sum subcontractors.

(7) Real property services. A contractor is not required to pay tax on real property services that are purchased as part of the construction of a new residential structure or as part of an improvement that is located immediately adjacent to the new structure and that is used in the residential occupancy of the structure. The contractor must issue a properly completed exemption certificate or other acceptable documentation to the service provider. If the comptroller subsequently determines that the work is taxable, then the contractor will be liable for all taxes, penalties, and interest that accrue upon such purchases. For the purposes of this paragraph, "contractor" includes a builder, developer, speculative builder, or other person who acts as a builder to improve residential real property.

(8) Materials that customers provide. A contract may specify that a customer will provide materials and that the person who performs improvements will provide the skill and labor that are necessary to incorporate the materials into realty. Under this type of contract, the person who provides the skill and labor will not incur tax liability on the materials. The customer is liable for the tax on the materials and must pay tax at the time of purchase of the materials.

(9) Noninstalled items. A person who manufactures an item for sale but who is not responsible for the incorporation of the item into realty is a manufacturer who is subject to the provisions of §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing). For example, cabinet makers who do not affix the cabinets to realty are manufacturers and not contractors.

(10) Local tax. A contractor's responsibility for local sales and use taxes depends on the type of contract entered into with the customer. [~~For information on city, county, and special purpose district taxes, see §3.379 of this title (relating to Contractors) and for information on transit taxes, see §3.429 of this title (relating to Contractors).~~]

(A) A contractor who has entered into a separated contract with the customer must collect local taxes on the charge for materials based on the location of the job site.

(B) A contractor who has entered into a lump-sum contract with the customer is the consumer of all materials used to perform a lump-sum contract.

(i) The lump-sum contractor should pay tax to suppliers on all materials at the time of purchase, unless the contractor maintains a valid tax-free inventory or holds a direct pay permit.

(ii) When the local sales taxes collected by the supplier are less than the 2.0% local tax cap, additional local use taxes are due based on the location where the goods are first stored or used. Local use tax is not due if the supplier collected a local sales tax for the same type of taxing jurisdiction.

(iii) When a lump-sum contractor has items shipped to the jobsite from outside of Texas, the contractor is responsible for accruing local taxes based on the location of the jobsite.

(iv) The lump-sum contractor must accrue local use tax based on the purchase price of the taxable item. The local use tax is due in the reporting period in which the item was first stored, used, or otherwise consumed in a local taxing entity.

(11) Enterprise projects and defense readjustment projects. In order for an enterprise project or a defense readjustment project to avail itself of certain sales tax refunds, the project must enter into a separated contract, and the charges for items that qualify for enterprise project or defense readjustment project refunds must be separately stated. A contractor who performs a separated contract must collect sales tax from the project on the sales price of the incorporated materials. See §3.329 of this title (relating to Enterprise Projects, Enterprise Zones, and Defense Readjustment Zones).

(12) Manufacturing facilities. For a manufacturer to qualify for sales tax exemptions on manufacturing equipment that is installed under a contract to improve real property, the manufacturer must enter into a separated contract. Additionally, the contract must separately state the charge for the qualifying manufacturing equipment. See §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(c) Tax responsibilities of contractors who perform lump-sum and separated contracts for exempt organizations.

(1) Exemption certificates and other required proof of exemption. A contractor must obtain properly completed exemption certificates to document exempt contracts. Written contracts or written purchase orders that are issued by governmental entities exempted under Tax Code, §151.309, are acceptable documentation of exempt contracts.

(2) Contractor liability.

(A) A contractor may claim an exemption under Tax Code, §151.311, on a purchase of a taxable item for use under a contract to improve realty for an organization that is exempt under Tax Code, §151.309 or §151.310. If the comptroller subsequently determines that

the organization is not exempt, then the contractor is liable for all taxes, penalties, and interest that accrue upon such purchase. If the validity of a claimed exemption or the exempt status of the customer is unclear, then the contractor may not accept the exemption certificate in good faith and should request additional evidence of the exempt status of the contract. If the customer claims to be an exempt organization, then a letter of sales and use tax exemption from the comptroller that is addressed to the customer relieves the contractor from further inquiry regarding the exempt status of the customer. See §3.287 of this title (relating to Exemption Certificates).

(B) A contract with a private party to improve real property owned by an exempt entity, other than a governmental entity described in Tax Code, §151.309, is not an exempt contract if the improvement to real property is for the primary use and benefit of the private party. However, a contractor in a non-exempt contract may purchase tax free tangible personal property that is used to improve real property owned by a governmental entity described in Tax Code, §151.309, if that tangible personal property is donated to the governmental entity and if the following conditions are satisfied:

(i) the contract between the contractor and the private party is a separated contract. See subsection (b) of this section for a discussion of lump-sum and separated contracts;

(ii) the contract provides that title to the materials [~~that are~~] used to perform the contract passes to the private party when the materials are delivered to the job site but before they are incorporated into the realty or used by either the contractor or the private party; and

(iii) the contract provides that the private party intends to donate the materials to the governmental entity before the materials are incorporated into the realty or used by the contractor. The private party must provide the contractor with a letter of intent or other document from the governmental entity that states its intent to accept the property.

(3) Materials that exempt customers provide. A contract may specify that the exempt customer will provide the materials and the contractor will provide the skill and labor that are necessary to perform the contract. Under this type of contract, the contractor will not incur tax liability on the materials. The exempt customer may issue exemption certificates to suppliers in lieu of tax when purchasing the materials. Materials that are incorporated into real property improvements that are not related to the exempt purpose of the customer exempt under Tax Code, §151.310(a)(1) or (2), are taxable. In this situation, the exempt customer must pay tax to suppliers when purchasing the materials. See also §3.322 of this title (relating to Exempt Organizations).

(4) Exempt items. The following items are exempt from sales and use tax when purchased for use in the performance of an exempt contract:

(A) tangible personal property that is incorporated into the realty;

(B) consumable items that are necessary and essential to the contract and are completely consumed at the job site; and

(C) taxable services that are performed at the job site and are:

(i) expressly required by the exempt contract to be provided or purchased by the contractor; or

(ii) integral to the performance of the exempt contract.

(5) Contractor's exemption or resale certificate. A contractor who performs a lump-sum or separated contract may issue a properly completed exemption certificate to a supplier for the purchase of exempt items that are identified in paragraph (4) of this subsection. The certificate must be properly completed and identify the contractor as the purchaser, the exempt entity for whom the improvements are made, and the project for which the items are being purchased. See §3.287 of this title (relating to Exemption Certificates). A contractor may choose to issue [~~give~~] a properly completed resale certificate when purchasing materials that will be incorporated into the customer's realty under a separated contract.

(6) Equipment. All machinery and equipment, including repair and replacement parts and accessories, that a contractor uses to perform contracts for any exempt entity are taxable. A contractor who purchases, rents, or leases equipment for use on a contract to improve realty for an exempt entity must pay tax on that purchase, rental, or lease.

(d) Development work. For the purposes of this subsection, development work means a contract with a private party to improve real property by building public infrastructure, such as roads or sewer lines, provided that the improvements are dedicated to and will be accepted by a governmental entity. To qualify as an exempt contract, the private party must dedicate the realty and the improvements to the governmental entity before the work begins, and the governmental entity must accept or conditionally accept the realty and the improvements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706193
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-0387

SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.833

The Comptroller of Public Accounts proposes an amendment to §3.833, concerning Certified Capital Companies and Certified Investor Premium Tax Credits pursuant to the Insurance Code, Article 4.51. House Bill 1741, 80th Legislature, 2007, adds low-income community businesses as an investment target for CAPCO's, allows an additional $200 million in investment credits and defines "Program One" and "Program Two" investment phases.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule language to statutory language and current practice. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule. This rule is proposed

under Tax Code, Title 2 and does not require a statement of fiscal implication for small businesses.

Comments on the proposal may be submitted to Greg Scheirman, Program Administrator, Texas Safekeeping Trust Co, 208 E. 10th, Austin, Texas 78701.

This amendment is proposed under Tax Code, §111.002 and §111.0022 which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and under Insurance Code, Article 4.51, which requires the comptroller to adopt rules to administer and implement Insurance Code, Chapter 4, Subchapter B.

The amended rule implements amendments to Texas Insurance Code, Chapter 4, Subchapter B.

§3.833. Certified Capital Companies and Certified Investor Premium Tax Credits.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrator means the Comptroller of Public Accounts for the State of Texas.

(2) [~~(1)~~] Affiliate means:

(A) a person who is an affiliate for purposes of Insurance Code, Article 823.003[~~, §2~~];

(B) a person who directly or indirectly:

(i) beneficially owns 10% or more of the outstanding voting securities or other voting or management interests of another person, whether through rights, options, convertible interests, or otherwise; or

(ii) controls or holds power to vote 10% or more of the outstanding voting securities or other voting or management interests of the other person;

(C) a person 10% or more of which the outstanding voting securities or other voting or management interests are directly or indirectly:

(i) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(ii) controlled or held with power to vote by the other person;

(D) a partnership in which the other person is a general partner; or

(E) an officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent of the other person.

(3) [~~(2)~~] Allocation date means the date on which the comptroller allocates premium tax credits to certified investors of a CAPCO under this section, except that in the case of a pro rata reallocation pursuant to subsection (g)(7)(B)(ii) of this section, the allocation date shall be the date of the reallocation.

(4) [~~(3)~~] CAPCO means a certified capital company as defined herein.

(5) [~~(4)~~] Certified capital means an investment of cash by a certified investor in a CAPCO that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the CAPCO.

(6) [~~(5)~~] Certified capital company means a partnership, corporation, trust, or limited liability company, whether organized on a profit or not-for-profit basis, that is in good standing with the State of Texas, is headquartered in Texas and has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this section.

(7) [~~(6)~~] Certified investor means an insurance company or health maintenance organization licensed by the Texas Department of Insurance or other person that has state premium tax liability under Insurance Code, Chapter 4, or a successor statute, [~~other than a title insurance company as defined in Insurance Code, Chapter 9,~~] that invests certified capital pursuant to an allocation of premium tax credits under this section.

(8) [~~(7)~~] Early stage business means a qualified business that satisfies at least one of the following criteria:

(A) is involved, at the time of a CAPCO's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(B) was initially organized less than two years before the date of the CAPCO's first investment; or

(C) during the fiscal year immediately preceding the year of the CAPCO's first investment had, on a consolidated basis with its affiliates, gross revenues of not more than $2 million as determined in accordance with generally accepted accounting principles.

(9) [~~(8)~~] Headquartered in Texas means the following requirements, at a minimum, are met with respect to Texas CAPCOs:

(A) the CAPCO has its principal office in Texas for operations covered under this section, in which the main investment and administrative functions of the CAPCO are conducted;

(B) the original principal books and records of the CAPCO are maintained in the Texas principal office; and

(C) a minimum of 80% of the CAPCO's expenses are spent in Texas including management fees, and administrative costs including but not limited to organizational fees, but for the purposes of this subparagraph, expenses do not include underwriting fees; closing costs (including rating agency fees, and other fees related to the closing of the CAPCO's funding); fees related to any insurance issued for a qualified debt instrument or associated premium tax credits; interest payments on indebtedness; and other expenses for services that the CAPCO demonstrates cannot be reasonably obtained in Texas.

(10) [~~(9)~~] Initially organized means the date that an entity's organizational documents were first accepted as filed by the appropriate official in the state of its incorporation or organization, as applicable, or, in the case of an entity that is not required to file its organizational documents with any state official, the date on which its members, partners, or owners, as applicable, originally executed the entity's organizational documents.

(11) Low-income community has the meaning assigned by Internal Revenue Code of 1986, §45D(e).

(12) [~~(10)~~] Person means a natural person or entity, including a corporation, general or limited partnership, trust, or a limited liability company.

(13) [~~(11)~~] Premium tax credit allocation claim means a claim for allocation of Texas premium tax credits on a form provided by the comptroller.

(14) [~~(12)~~] Primary or primarily under this section means at least 80%.

(15) [~~(13)~~] Principal business operations means at least 80% of the business organization's employees reside in Texas or 80% of the business payroll is paid to individuals living in Texas.

(16) [~~(14)~~] Principal office means the location in Texas that is the primary place for investment functions of the CAPCO and the principal location for books and records of the CAPCO.

(17) Program One means the program for allocation and investment of certified capital under this chapter before January 1, 2007.

(18) Program Two means that program for allocation and investment of certified capital on or after January 1, 2007.

(19) [~~(15)~~] Qualified business means a business that, at the time of a CAPCO's first investment in the business:

(A) is headquartered in Texas or relocates its headquarters and principal business operations to Texas within 90 days, and based on an affidavit by an officer or owner of the business, that it [~~a copy of its business plan,~~] intends to remain in Texas after receipt of an investment by the CAPCO;

(B) has its principal business operations in Texas or relocates its principal business operations to Texas within 90 days, and based on a copy of its business plan or other evidence of domicile, intends to maintain business operations in Texas after receipt of an investment by the CAPCO;

(C) has agreed to use the qualified investment primarily:

(i) to support its principal business operations in Texas, other than for advertising, promotion, and sales operations, which may be conducted outside of Texas; or

(ii) in the case of a start-up company, to establish and support business operations in Texas as evidenced by an affidavit of an officer or owner of the business, other than for advertising, promotion, and sales operations, which may be conducted outside of Texas;

(D) does not have more than 100 employees either full-time or part-time employees, as evidenced by official state or federal employment tax returns or an affidavit signed by an owner or director of the business and:

(i) at least 80% of its employees reside in Texas; or

(ii) pays 80% of its payroll to Texas residents;

(E) is primarily engaged in:

(i) manufacturing, processing, or assembling products;

(ii) conducting research and development; or

(iii) providing services;

(F) does not incur more than 20% of its expenses and does not receive more than 20% of its income from:

(i) retail sales;

(ii) real estate development;

(iii) the business of financial services including insurance, banking, leasing or lending; or

(iv) the provision of professional services provided by accountants, attorneys, or physicians;

(G) is not or does not:

(i) formed or organized, directly or indirectly, by a CAPCO or an affiliate of the CAPCO as evidenced by a capitalization table prior to the initial investment and a post transaction proforma capitalization table;

(ii) a franchisee of a CAPCO; or

(iii) an affiliate of the CAPCO; or

(iv) have any financial relationship with a CAPCO before the date on which the CAPCO makes its first investment in such business.

(20) [~~(16)~~] Qualified debt instrument means a debt instrument issued by a CAPCO, at par value or a premium that:

(A) has an original maturity date of at least five years after the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years, including payments of cash and tax credits. A repayment schedule is not faster than a level principal amortization over five years if the repayment schedule for the debt instrument issued by the CAPCO has a scheduled outstanding principal balance greater than a hypothetical note with the same price and yield as the CAPCO's debt instrument that provides for principal to be amortized over equal, consecutive daily payments, where payments are first allocated to accrued interest and then to principal, however, a certified investor may receive payments at any time for future earned interest, provided the amount received does not exceed the present value of that future interest payment, discounted by a factor that is not less than the stated interest rate of the debt instrument.

(C) Has no interest, distribution, or payment features that are related to the profitability of the CAPCO or the performance of the CAPCO's investment portfolio.

(21) [~~(17)~~] Qualified distribution means any distribution or payment from certified capital, the return of capital from qualified investments, or the profits earned thereon by a CAPCO in connection with:

(A) the reasonable costs and expenses of forming, syndicating, managing, and operating the CAPCO, provided that the distribution or payment is not made directly or indirectly to a certified investor or an affiliate of a certified investor, including:

(i) the reasonable costs and expenses of forming, syndicating, or organizing the CAPCO, so long as these costs;

(I) shall be limited to the greater of;

(-a-) $250,000; or

(-b-) 5.0% [~~5%~~] of the amount of certified capital the CAPCO initially received as investment from its certified investors; or

(-c-) $1,500,000; and

(II) provided that at the time the CAPCO closes its investment from its certified investors and after deducting the aggregate of the costs of organizing, forming, syndicating, insuring and defeasing the obligations, the CAPCO must have available for qualified investments, cash and/or permissible investments in an amount equal to at least 50% of the amount of certified capital initially received from its certified investors.

(ii) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the operation of the company are limited to 1.0% in any calendar year of the amount of certified capital the CAPCO initially received as investment from its certified investors; and

(iii) an annual management fee in an amount that does not exceed 2.5% of the certified capital of the company;

(B) any projected increase in federal income or state taxes based on income or imputed income of the CAPCO, including penalties and interest related to those taxes, of the equity owners of the CAPCO resulting from the earnings or other tax liability of the CAPCO to the extent that the increase is related to the ownership, management, or operation of the CAPCO in Texas.

(22) [~~(18)~~] Qualified investment means the investment of cash by a CAPCO in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt, but that provides for conversion into equity or equity participation instruments such as options or warrants; provided that the investment must not have a final stated maturity or be subject to mandatory redemption or repurchase prior to two years from the date of initial investment and, provided further, that not more than 50% is used to refinance existing non-CAPCO debt. Notwithstanding the foregoing, a qualified investment shall not include an investment that results, or could result, in a CAPCO owning 50% or more of the voting or non-voting stock of a qualified business as evidenced by a proforma capitalization table presented to the administrator, unless:

(A) such ownership is the result of:

(i) the CAPCO's exercise of its rights and remedies following a default in the obligations of the qualified business;

(ii) the CAPCO's exercise of preemptive rights granted to it in connection with its initial investment in a qualified business, provided such rights are exercised in connection with an investment in such qualified business by a party other than the CAPCO or an affiliate of the CAPCO;

(iii) the operation of any anti-dilution rights granted to a CAPCO in connection with its initial investment in a qualified business; or

(B) such investment is approved by the comptroller prior to its being made.

(23) [~~(19)~~] State premium tax liability means:

(A) any gross insurance premium tax or health maintenance organization gross receipts tax liability incurred by any person under Insurance Code, Chapter 4; or

(B) if the gross premium tax liability imposed under Insurance Code, Chapter 4, on January 1, 2003, is eliminated or reduced, any substitute tax liability imposed on an insurance company or other person that had premium tax liability or health maintenance organization gross receipts tax liability under the Insurance Code on that date.

(24) [~~(20)~~] Strategic investment area means an area of Texas that qualifies at the time of investment as a strategic investment area under Tax Code, Chapter 171, Subchapter O, or after the expiration of that subchapter, an area that qualified as a strategic investment area under that subchapter immediately before its expiration.

(25) [~~(21)~~] Strategic investment business means a qualified business that has its principal business operations located in one or more strategic investment areas and that intends to maintain business operations in the strategic investment areas after receipt of an investment by the CAPCO as documented in the business plan or other business records that were generated at or before the time of the investment.

(b) Application Process. Any entity that seeks to operate in Texas as a CAPCO under the provisions of the Insurance Code shall comply with the application procedures set forth in this section. [~~The comptroller will begin accepting applications for certification as a CAPCO 30 days after the adoption of this section.~~]

(1) An applicant must file with the comptroller the following:

(A) a completed Application for Certification on a form provided by the comptroller,

(B) a nonrefundable application fee of $7,500;

(C) an audited balance sheet with an unqualified opinion from an independent certified public accountant and any Statement of Auditing Standard No. 61 communications provided by the auditor, as of a date not more than 35 days before the date of application;

(D) documentation that the prospective CAPCO is duly organized and qualified to do business in Texas;

(E) evidence of an equity capitalization of at least $500,000 in the form of unencumbered cash or cash equivalents;

(F) evidence that at least two principals or persons employed or engaged to manage the funds of the applicant have at least four years of experience in the venture capital industry;

(G) a commitment that if certified, the CAPCO will establish in Texas its headquarters within 60 days of certification; and

(H) biographical, personal, financial, investment, and historical data for each manager, principal, and the entity itself that provides the following, as applicable:

(i) prior venture capital firms with which the manager or principal was employed that specifically includes details on:

(I) the valuation of portfolio investments, including the manager or principal's ability to structure and execute timely and effective exits from portfolio investments;

(II) historical investment performance of prior firms managed by the same managers or principals;

(III) historical performance of the CAPCO and each of the managers or principals identified in subparagraph (F) of this paragraph, relating to investments in early stage businesses;

(IV) the investment philosophy of the firm;

(V) the history and strategy of the CAPCO and its managers or principals for obtaining investors and making investments, particularly in the targeted areas of early stage businesses and strategic investment businesses, low-income community businesses or comparable targeted early stage investments or investments in the underserved areas in Texas or other states;

(VI) disclosure of any fines, penalties, or other sanctions or actions by any state, federal, or other regulatory entity, including the Securities and Exchange Commission against the CAPCO or its managers or principals, relating to violations of any type; and

(VII) a five-year business plan, which shall include the applicant's investment strategy and investment criteria and which must comply with the requirements of subsection (a)[~~paragraph~~](18) of this section with respect to qualified investments in qualified businesses. If the comptroller determines that an applicant's investment strategy or investment criteria would not effectively further economic development in Texas the applicant's certification may be denied.

(ii) any other information that the comptroller may later request to determine the quality of the firm's management, reputation, code of ethics, investment strategy, and practices.

(2) Any false, inaccurate, or misleading information provided in the application may be grounds for rejection of the application and denial of further consideration, as well as decertification, if the information, discovered at a subsequent date, would have resulted in the denial of the certification. The applicant shall also notify the comptroller as soon as possible or within 10 business days of the following:

(A) when the applicant is unable to continue as a viable going concern; and

(B) when the applicant is subject to litigation that may affect its viability as a going concern.

(3) Management by certain entities prohibited. An insurance company, group of insurance companies, or other persons who may have state premium tax liability or the affiliates of the insurance companies or other persons may not, directly or indirectly:

(A) manage a CAPCO;

(B) beneficially own, whether through rights, options, convertible interest, or otherwise, more than 10% of the outstanding voting securities of a CAPCO; or

(C) control the direction of investments for a CAPCO.

(4) Paragraph (3) of this subsection applies without regard to whether the insurance company or other person or the affiliate of the insurance company or other person is licensed by or transacts business in Texas.

(5) Paragraphs (3) and (4) of this subsection do not preclude a certified investor, insurance company, or any other party from exercising its legal rights and remedies, including interim management of a CAPCO, if authorized by law, with respect to a CAPCO that is in default of its statutory or contractual obligations to the certified investor, insurance company, or other party.

(6) The date of receipt of an application is the postmark date or the date of the independent delivery. Incomplete applications shall be treated as not received. All submissions to the comptroller may be either by hand delivery or via overnight common carrier to the attention of CAPCO Administrator, Texas Treasury Safekeeping Trust Company, 208 E. 10th Street, Austin, Texas 78701.

(7) The comptroller shall review the application and all required documents to ensure that the applicant satisfies the requirements for certification as a CAPCO. Within 30 days of the date of receipt of an application the comptroller shall:

(A) issue the certification; or

(B) refuse to issue the certification and provide to the applicant the grounds for the refusal, including suggestions for the removal of those grounds. The comptroller shall have 10 business days from the day that the additional information was submitted to approve or reject the application and certification request.

(c) Offering material used by a CAPCO. Any offering material involving the sale of securities of a CAPCO must include the following statement: BY AUTHORIZING THE FORMATION OF A CERTIFIED CAPITAL COMPANY, THE STATE OF TEXAS DOES NOT ENDORSE THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF THE COMPANY AND IS NOT LIABLE FOR DAMAGES OR LOSSES TO A CERTIFIED INVESTOR IN THE COMPANY. USE OF THE WORD "CERTIFIED" IN AN OFFERING DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE COMPTROLLER OF PUBLIC ACCOUNTS. IF APPLICABLE PROVISIONS OF LAW ARE VIOLATED, THE STATE OF TEXAS MAY REQUIRE FORFEITURE OF UNUSED PREMIUM TAX CREDITS AND REPAYMENTS OF USED PREMIUM TAX CREDITS.

(d) Requirements for renewal and continuance of certification. A CAPCO must comply with the requirements for renewal and continuance of certification set forth in this subsection.

(1) Each CAPCO shall pay a nonrefundable renewal fee of $5,000 to the comptroller not later than January 31 of each year, except that a renewal fee is not required within six months of the date on which the certification is issued.

(2) If a CAPCO fails to pay its renewal fee on or before January 31 of each year, the company must pay, in addition to the renewal fee, a late fee of $5,000 to continue its certification.

(3) If a CAPCO fails to pay the renewal fee and late fee as stated in paragraph (2) of this subsection within 60 days after January 31, the CAPCO shall be subject to decertification.

(4) To continue to be certified, a CAPCO must make qualified investments of certified capital received from certified investors, with respect to Program One and Program Two, according to the following schedule:

(A) before the third anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 30% of its certified capital; and

(B) before the fifth anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 50% of its certified capital, subject to the following:

(i) at least 50% of the dollar amount of qualified investments required in subparagraph (B) of this paragraph must be placed in early stage businesses; and

(ii) at least 30% of the dollar amount of qualified investments required in subparagraphs (A) and (B) of this paragraph must be placed in strategic investment and/or low income community businesses.

(5) The aggregate cumulative amount of all qualified investments made by the CAPCO after its allocation date shall be considered in the computation of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section. Any investment returns or profits received by the CAPCO from a qualified investment may be invested in another qualified investment and counted towards any requirement in this section with respect to investments of certified capital.

(6) Any amounts received by a certified capital company from a qualified business as commitment fees, closing fees, license fees, royalties or similar charges shall be considered as reductions in the CAPCO's qualified investments in the computation of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section.

(7) A business that is classified as a qualified business, early stage business, or strategic investment business or low-income community business at the time that the CAPCO first invests in the business remains classified as a qualified business, early stage business, or strategic investment business or low-income community business. The business may receive follow-on investments from any CAPCO, even though the qualified business may not meet the definition of a qualified business, early stage business, or strategic investment business, low income community business as applicable, at the time of the follow-on investment, unless the qualified business no longer has its principle business operations in Texas. Investment in the

qualified business by another CAPCO retains the qualified business' original classification.

(8) A CAPCO may not make a qualified investment the cost of which is greater than 15% of the total certified capital of the CAPCO at the time of investment.

(9) A CAPCO shall invest any certified capital not invested in qualified investments only in the following, provided however, that any such investments are not assigned, pledged, restricted, or otherwise encumbered for the benefit of an affiliate of a CAPCO:

(A) cash deposited with a federally insured financial institution located in Texas that is not affiliated with the CAPCO;

(B) certificates of deposit in a federally insured financial institution located in Texas that is not affiliated with the CAPCO;

(C) investment securities that are obligations of the United States or its agencies or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;

(D) debt instruments rated at least "A" or its equivalent at the time of purchase by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by an entity whose unsecured indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor provided that the debt instruments are not procured through a financial institution affiliated with the CAPCO;

(E) obligations of Texas or any municipality or political subdivision of Texas provided that the obligations are not procured through a financial institution affiliated with the CAPCO; and

(F) any other investments approved in advance and in writing by the comptroller.

(10) If a qualified business moves its principal business operations outside Texas before the 90th day after a CAPCO makes an investment in it, the investment is not considered a qualified investment for the purposes of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section.

(11) Any transfer, sale, acquisition, purchase, assignment, or merger of a CAPCO ownership interest should be pre-approved by the comptroller. In no event shall an owner or any affiliate, having an ownership interest of 10% or greater, of a CAPCO, acquire an ownership interest of 10% or greater in another CAPCO without the written approval of the comptroller. The comptroller may request any information deemed necessary to evaluate changes in CAPCO ownership.

(e) Annual review. Each CAPCO is subject to review as specified in this section to determine compliance with rules and statutes.

(1) The comptroller shall conduct an annual review of each CAPCO to:

(A) ensure that the CAPCO continues to satisfy the requirements of this section and Insurance Code, Articles 4.51 - 4.73;

(B) ensure that the CAPCO has not made any investment in violation of this section and Insurance Code, Articles 4.51 - 4.73; and

(C) determine the eligibility status of its qualified investments.

(2) Each CAPCO shall pay the reasonable cost for the annual review to be billed by the comptroller or, if the review is conducted by an independent examiner under the authority of the comptroller, the CAPCO shall reimburse the comptroller.

(f) Decertification. A CAPCO may be decertified for violations of this section or the Insurance Code, and premium tax credits may be recaptured and forfeited to the extent expressly set forth in this section or in the Insurance Code.

(1) A material violation of Insurance Code, Articles 4.56, 4.58, or 4.59 is grounds for decertification of a CAPCO. The comptroller shall notify the officers of the CAPCO in writing of the violations and that the company may be decertified after 120 days from the date on which the notice is mailed, unless the violations are corrected as determined by the comptroller.

(A) Violations of Insurance Code, Articles 4.56(a), 4.56(b), 4.56(f) or 4.56(h) shall constitute a material violation of the statutes.

(B) Two consecutive violations of the requirements of Insurance Code, Article 4.58 or 4.59 shall constitute a material violation of the statute.

(C) Two or more consecutive instances of a CAPCO failing to pay fees or penalties on a timely basis, two or more consecutive omissions of required information, a misstatements of facts in applications or annual reports, shall constitute material violations of the statutes.

(2) A hearing is available to a CAPCO that is subject to decertification as provided in Chapter 1, Subchapter A, Division 1, §§1.1 - 1.42 of this title (relating to Central Administration).

(3) Decertification is effective on the date on which the company receives notice of decertification from the comptroller. Notices will be sent via certified mail or via an overnight common carrier delivery service, and become effective on receipt by the CAPCO.

(4) In the event of decertification of a CAPCO, the comptroller shall notify any appropriate state agency of the decertification including, but not limited to the Secretary of State, the Office of Economic Development and Tourism, and the Office of the Insurance Commissioner.

(5) Premium tax credits previously claimed shall be recaptured and future premium tax credits shall be forfeited following decertification of a CAPCO in accordance with the provisions of Insurance Code, Article 4.63.

(6) When a CAPCO has invested an amount equal to 100% of its certified capital, with respect to Program One and Program Two, in qualified investments, any premium tax credit claimed or to be claimed by a certified investor is not subject to recapture or forfeiture.

(7) The comptroller will send a written notice to each certified investor whose premium tax credit is subject to recapture or forfeiture for failure of the CAPCO to maintain certification eligibility. Notification will be sent in accordance with paragraph (3) of this subsection.

(8) The comptroller may impose an administrative penalty on any CAPCO that violates the provisions of this section. Each day a violation continues or occurs is a separate violation. The maximum penalty may not exceed $25,000 for each violation.

(A) The penalty amounts are based on the following:

(i) seriousness of the violations, including the nature, circumstances, extent, and gravity of the violation;

(ii) economic harm caused by the violation;

(iii) history of previous violations;

(iv) amount necessary to deter a future violation;

(v) efforts to correct the violation; and

(vi) any other matter that justice may require.

(B) Each of the following is a separate violation that is subject to a penalty of $5,000. Thereafter, an additional penalty of $5,000 will be imposed for each 30 day period the violation remains uncorrected:

(i) failure to file annual reports by January 31;

(ii) failure to maintain in the principal office in Texas all financial, administrative, management and investment records, including details of both qualified investments and unqualified investments;

(iii) failure to report names and addresses of certified investors, including the date and amount of investments;

(iv) failure to file an annual audited financial statement with an unqualified opinion and any Statement of Auditing Standard No. 61 communication by April 1; and

(v) failure to provide detailed financial and investment information that supports each annual report.

(C) Each of the following is a separate violation that is subject to a penalty of $10,000. Thereafter, an additional penalty of $10,000 will be imposed for each 30 day period the violation remains uncorrected:

(i) failure to maintain the primary CAPCO office in Texas;

(ii) investment in a business that is found to be unqualified, without first requesting from the comptroller an evaluation of the business as provided under subsection (g) of this section; and

(iii) failure to provide information about the CAPCO's operation within 30 days after the comptroller requests the information.

(D) If a CAPCO is assessed penalties, a re-determination hearing may be requested as provided in Tax Code, Chapter 111.

(9) Indemnity Agreements and Insurance Authorization. A CAPCO may agree to indemnify or purchase insurance for the benefit of a certified investor for losses resulting from the recapture or forfeiture of premium tax credits under Insurance Code, Article 4.63. Any guaranty, indemnity, bond, insurance policy, or other payment undertaking made under this section may not be provided by more than one certified investor of the CAPCO or affiliate of the certified investor.

(g) Premium Tax Credits. In the year a certified investor makes an investment of certified capital, the certified investor shall earn a vested premium tax credit that is equal to the amount of the investment, subject to the other provisions in this section. With respect to Program One, beginning [~~Beginning~~] with the tax report due March 2 [~~1~~], 2009, for the 2008 tax year, a certified investor may take up to 25% of these tax credits each year until all credits have been used. The credit may not be applied to estimated payments due in 2008, but may be applied to estimated payments beginning with those made in 2009. With respect to Program Two, beginning with the tax report due March 1, 2013 for the 2012 tax year, a certified investor may take up to 25% of these credits each year until all credits have been used. The credit may not be applied to estimated payments due in 2012 but may be applied to estimated payments beginning with those made in 2013.

(1) The credit to be applied against state premium tax liability in any one year may not exceed the state premium tax liability of the certified investor for the taxable year. Any unused credit against state premium tax liability may be carried forward indefinitely until the premium tax credits are used.

(2) A certified investor claiming a credit against state premium tax liability earned through an investment in a Texas CAPCO is not required to pay any additional retaliatory tax levied under Insurance Code, Article 21.46, as a result of claiming that credit.

(3) A premium tax credit allocation claim form for certified investors must be prepared and executed by each CAPCO receiving an investment commitment, on a form provided by the comptroller. A CAPCO and its affiliates may not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed. The form shall include an affidavit of the certified investor that legally binds the investor to make an investment of certified capital in an amount allocated by the comptroller. The forms are due from each CAPCO not later than the 120th day after the date the CAPCO rule is adopted.

(4) The comptroller shall notify each CAPCO of the amount of tax credits allocated to each certified investor not later than the 15th business day after the date on which the comptroller accepts premium tax credit allocation claims.

(5) A certified investor's tax credits are limited to the amount of certified capital as allocated or as subsequently reallocated by the comptroller and funded by the certified investor. The maximum request for premium tax credits that any one individual certified investor, on an aggregate basis with its affiliates, may request in one or more premium tax allocation claim forms submitted pursuant to paragraph (1) of this subsection may not exceed the greater of:

(A) $10 million; or

(B) 15% of the maximum aggregate amount available under Insurance Code, Article 4.67(a).

(6) The total amount of credits allowed is $200 million for all years. Total annual credits are limited to the lesser of $50 million per year, or 25% of the total amount of investment. A CAPCO, together with its affiliates, may not file premium tax credit allocation claims on behalf of its investors in excess of $200 million with respect to Program One or Program Two.

(7) Pro rata allocation of credits.

(A) The comptroller shall perform a pro rata allocation of the total amount of premium tax credits under this if:

(i) the total amount of certified capital requested under paragraph (3) of this subsection exceeds the total limit on credits under paragraph (6) of this subsection; or

(ii) if an allocation of credits under clause (i) of this subparagraph has occurred and a CAPCO notifies the comptroller either by hand delivery or overnight common carrier delivery service that it did not receive an investment of certified capital equal to the amount of the investment commitment from one or more investors, as provided on the premium tax credit allocation form that is filed under paragraph (3) of this subsection, before the end of the 10th business day after the date of receipt of the notice of allocation.

(B) the pro rata allocation for each certified investor shall be computed as follows:

(i) for an allocation under subparagraph (A)(i) of this paragraph, a fraction, the numerator of which is the value determined in paragraph (5) of this subsection for each certified investor

and the denominator of which is the total amount of all premium tax credit allocation claims that are filed with respect to Program One or Program Two under paragraph (3) of this subsection, for all certified investors, multiplied by the total limit on credits for such program [~~of $200 million~~] as provided by paragraph (6) of this subsection.

(ii) for a reallocation under subparagraph (A)(ii) of this paragraph, the comptroller shall reallocate the forfeited premium tax credit allocation among the other certified investors in all CAPCOs that originally received an allocation, in an amount that will ensure a result after reallocation that is the same as if the original request for the forfeited allocation had not been included in the allocation process.

(8) Premium tax credits allocated under this subsection may be transferred or assigned as provided in §3.830 of this title (relating to Premium Tax Credit for Examination Expenses, Evaluation Fees, Assessments, and Certified Capital Companies (CAPCOs); [,] Limitations and Transfers). The transfer or assignment of a premium tax credit does not affect the schedule for taking premium tax credits under this section. The transfer, sale, or assignment of premium tax credits, are subject to the follow conditions:

(A) Failure to comply with §3.830 of this title, could jeopardize the investor's ability to transfer premium tax credits.

(B) Any liability with respect to premium tax credits transferred pursuant to Insurance Code, Article 4.71, that are recaptured pursuant to Insurance Code, Chapter 4, Subchapter B, shall be the responsibility of the taxpayer that actually claimed the credit.

(9) If a CAPCO is decertified, the comptroller will adjust any tax report records that are impacted by the recapture or forfeiture of premium tax credits under Program One or Program Two and will enforce the collection of additional premium taxes as a result of the recapture or forfeiture. For purposes of this section in the recapture of tax credits taken, the provisions of Tax Code, §111.207, shall apply as if the limitation period had been tolled before the end of the limitation under Tax Code, §111.204. These provisions shall apply to all insurers and persons, including those who received a transfer or assignment of the credits to be adjusted or recaptured.

(h) Evaluation of Proposed Qualified Business. Before a CAPCO makes an investment, it may request that the comptroller determine whether the business is a qualified business, an early stage business, or a strategic investment business or a low-income community business. The CAPCO shall provide all information it has gathered on the business including its plan of operation and plans for future expansion. The request may be denied if the comptroller determines that the proposed investment is not consistent with the CAPCO's investment strategy or investment criteria as approved by the comptroller at certification.

(1) Not later than 15 business days following receipt of a request, the comptroller shall issue a determination of whether the business meets the definition of a qualified business, early stage business, or strategic investment business or low-income community business.

(2) The comptroller may notify the CAPCO that an additional 15 business days will be needed to review and make the determination.

(3) If the comptroller fails to notify the CAPCO as provided under either paragraph (1) or (2) of this subsection, the business is considered to be a qualified business, early stage business, or a strategic investment business or low-income community business, as appropriate.

(i) Qualified distributions and repayment of debt. A CAPCO may make a qualified distribution at any time. A CAPCO may make a distribution or payment that is not a qualified distribution only if the CAPCO has made original qualified investments in an amount cumulatively equal to 100% of its certified capital.

(1) A CAPCO may make repayments of principal and interest on its indebtedness without regard to this subsection, and without restriction, including repayments of indebtedness of the CAPCO on which certified investors earned premium tax credits. Repayments do not relieve the CAPCO of the requirements for renewal and continuance of certification under subsection (d) of this section.

(2) If a business in which a qualified investment has been made relocates its principal business operations outside Texas during the term of the CAPCO's investment in the business, the cumulative amount of qualified investments made from Program One or Program Two [~~by the CAPCO~~], for purposes of satisfying the requirements of this subsection, is reduced by the amount of the CAPCO's qualified investments in this business. This provision shall not apply if the business demonstrates that it has returned its principal business operations to Texas not later than 90 days after the date of its relocation.

(3) If a qualified business in which a qualified investment has been made is subsequently acquired by or merged into another entity, whether headquartered inside or outside of Texas during the term of the CAPCO investment in the business, it will remain a qualified investment and not be subject to paragraph (2) of this subsection, if after the acquisition or merger and for the duration of the CAPCO's investment in the business, the business continues to operate within the remaining provisions of this section for qualified business as stated in subsection (a)(15) of this section.

(4) If, after a CAPCO initially invests in a qualified business, there is a subsequent follow on investment in that qualified business, the investment will be considered an additional qualified investment for purposes of satisfying the provision requiring investment milestones.

(j) Required reports. Each CAPCO shall report to the comptroller:

(1) as soon as practicable after receipt of certified capital, but not to exceed 45 days;

(A) the certified investors name, address, and taxpayer identification number;

(B) the date and amount of investment received by the CAPCO from each certified investor; and

(C) the type and amount of security issued by the CAPCO to the certified investors in exchange for the investment resulting in premium tax credits, including the names of the companies that issued the security together with a copy of the security instrument.

(2) An annual report due each January 31 that contains:

(A) the amount of the CAPCO's certified capital, including details of all investments, at the end of the preceding calendar year, including but not limited to whether or not the company has invested more than 15% of its total certified capital in any one business for Program One or Program Two [~~at cost~~];

(B) a detailed listing of investment violations under this section;

(C) each qualified investment the CAPCO made during the preceding year and, with respect to each qualified investment, the number of retained jobs and the average wages paid per employee of the qualified business at the time the qualified investment was made with respect to Program One and Program Two;

(D) the number of jobs created by the investment and the average wages paid for the jobs;

(E) the classification of the qualified businesses according to the industrial sector and the size of the business;

(F) a copy of the business plan or plan of operation for each of the qualified businesses in which the CAPCO invested in the preceding year; and

(G) any other information the comptroller requires by notification or instructions to each CAPCO.

(3) An annual audited financial statement for the prior calendar year ending December 31, by April 1, that includes the opinion of an independent certified public accountant. The auditor shall also address the methods of operation and conduct of the business of the company by performing certain agreed upon procedures to determine whether:

(A) the company is complying with Insurance Code, Chapter 4, Subchapter B, with respect to the CAPCO requirements and the rules adopted in this section;

(B) the funds received by the company have been invested as required within the time provided by Insurance Code, Article 4.56(a); and

(C) the company has invested the funds in qualified businesses.

(k) Report to the legislature. The comptroller shall prepare a biennial report to the legislature with respect to results of implementation of this section. This report shall be filed with the governor, the lieutenant governor, and the speaker of the house of representatives, not later than December 15 of each even-numbered year. The report shall include:

(1) the names and number of CAPCOs holding certified capital;

(2) the amount of certified capital invested in each CAPCO;

(3) the amount of certified capital the CAPCO has invested in qualified business, including the names and locations of the businesses, as of January 1, 2006, and each subsequent year;

(4) the amount of tax credits granted based on certified investments along with the tax credits taken by year;

(5) the performance of each CAPCO with respect to renewal and reporting requirements;

(6) information concerning qualified businesses in which CAPCOs have invested, and is to include:

(A) the classification of the businesses, along with the industrial sector and size of each business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs;

(7) a list of the CAPCOs that have been decertified or that have failed to renew the certification and the reason for any decertification.

(l) Confidentiality: any information containing confidential business or trade secrets shall be kept confidential only to the extent provided by the Texas Public Information Act, Texas Government Code, Chapter 552.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706129
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-0387

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)
SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39

The Comptroller of Public Accounts proposes amendments to §5.39, concerning hazardous duty pay.

House Bill 2498, 80th Legislature, 2007, amended Government Code, §659.305, in order to increase the amount of hazardous duty pay that full-time corrections officers of the Texas Department of Criminal Justice may receive. Both Senate Bill 737 and House Bill 2498, 80th Legislature, 2007, also remove the $300 per month cap for hazardous duty pay for full-time state employees.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result would be in improving public safety. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposed amendment may be addressed to Joani Bishop, Manager, Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendment is proposed under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L. Subchapter L governs hazardous duty pay. The amendment implements Government Code, Chapter 659, Subchapter L.

§5.39. Hazardous Duty Pay.

(a) Definitions. Except as otherwise provided in this section[~~, in this section~~]:

(1) "Classified position" means a position included in the position classification plan in the General Appropriations Act, Article IX.

(2) "Correctional Officer" means an employee in a job class designated by the Texas Department of Criminal Justice as a correctional officer holding a hazardous duty position and reported annually to the Comptroller of Public Accounts before the start of each fiscal year.

(3) [~~(2)~~] "Full-time state employee" has the meaning assigned by Government Code, §659.301(1).

(4) [~~(3)~~] "Hazardous duty position" means a position in the service of the state that:

(A) renders any individual holding that position a "state employee," as defined in paragraph (10) [~~(9)~~] of this subsection; or

(B) requires the performance of hazardous duty.

(5) [~~(4)~~] "Institution of higher education" has the meaning assigned by Government Code, §659.301(3).

(6) [~~(5)~~] "Lifetime service credit" means the number of months that an individual has served in a hazardous duty position during the individual's lifetime.

(7) [~~(6)~~] "Part-time state employee" has the meaning assigned by Government Code, §659.301(4).

(8) [~~(7)~~] "Regular hours" means the number of hours an individual actually works during a month.

(9) [~~(8)~~] "Standard hours" means the total number of hours that an individual would work during a month if the individual worked exactly eight hours during each workday of that month.

(10) [~~(9)~~] "State employee" means an individual who is a state employee under subsection (b)(1)(A) or (b)(2)(A) of this section.

(11) "TDCJ" means the Texas Department of Criminal Justice.

(12) [~~(10)~~] "TYC" means the Texas Youth Commission.

(13) [~~(11)~~] "Type 1 grandfathered employee" means a state employee whose compensation for services provided to the state during any month before August 1987, included hazardous duty pay that was based on total state service performed before May 29, 1987.

(14) [~~(12)~~] "Type 2 grandfathered employee" means an individual who is entitled to receive hazardous duty pay under subsection (g) of this section.

(15) [~~(13)~~] "Workday" has the meaning assigned by Government Code, §659.301(6).

(b) (No change.)

(c) Amount of hazardous duty pay.

(1) Monthly amount for individuals employed by TYC.

(A) (No change.)

(B) The amount of hazardous duty pay that TYC pays monthly to a full-time state employee may not exceed [~~neither:~~]

[~~(i)~~] $10 for each 12 month period of lifetime service credit accrued by the employee.[~~; nor~~]

[~~(ii)~~ ~~$300.~~]

(C) - (D) (No change.)

(2) - (3) (No change.)

(4) Correctional officers of TDCJ.

(A) The amount of hazardous duty pay for a particular month for a full-time correctional officer employed by TDCJ is the lesser of:

(i) $12 for each 12 month period of lifetime service credit accrued by the employee; or

(ii) $300.

(B) The amount of hazardous duty pay that TDCJ pays a part-time correctional officer is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time correctional officer; and

(ii) a quotient:

(I) the numerator of which is equal to the number of hours the employee normally works each week, not to exceed 40; and

(II) the denominator of which is equal to 40.

(C) The amount of hazardous duty pay that TDCJ pays an hourly correctional officer is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time correctional officer; and

(ii) a quotient:

(I) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(II) the denominator of which is equal to the number of standard hours for that month.

(d) - (e) (No change.)

(f) Exceptions for type 1 grandfathered employees.

(1) - (2) (No change.)

(3) Amount for non-hourly employees.

(A) - (B) (No change.)

[~~(C) The amount determined under subparagraph (A)(ii) or (B)(ii) of this paragraph may not exceed $300.~~]

(4) - (5) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706194
Martin Cherry
General Counsel
Comptroller of Public Accounts
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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3044

The Comptroller of Public Accounts proposes an amendment to §9.3044, concerning appointment of agents for property taxes. Tax Code, §1.111 governs the designation of a person to act as the owner's agent for any purpose under Tax Code, Title 1, in connection with the property or the property owner.

Subsection (c) is being amended to clarify that the previous amendments to the rule are not intended to conflict with the provisions of Tax Code, §1.111(b). The rule was recently amended to provide that a person who is required to register as a property tax consultant under Occupations Code, Chapter 1152, may not sign form 50-162-1 or form 50-241-1 on behalf of a property owner, and to specify that when the form for designating an agent conflicts with the form for updating the designation of agent, the form for designating an agent prevails. Some appraisal districts have interpreted these provisions in a manner that conflicts with the provisions of Tax Code, §1.111(b). The amendment clarifies that nothing in the rule is intended to conflict with Tax Code, §1.111(b). Subsection (n) is amended to delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended rule will be in clarifying the limits on the authority of agents representing property owners before appraisal districts. The proposed amendment would have no significant fiscal impart on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the amendment may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under Tax Code, §1.111(h), which requires that the comptroller adopt rules to facilitate compliance with the law.

The amendment implements Tax Code, §1.111(b).

§9.3044. Appointment of Agents for Property Taxes.

(a) - (b) (No change.)

(c) The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. Unless otherwise authorized as provided by Tax Code, §1.111(b), a [~~A~~] person who is required to register as a property tax consultant under Occupations Code, Chapter 1152, may not sign form 50-162-1 or form 50-241-1 on behalf of a property owner. The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property, the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed. If a conflict arises concerning the representation of a property owner based on the owner's designation of an agent on form 50-162-1 and the agent's filing of form 50-163 for account updates, the written authorization provided by form 50-162-1 shall prevail. Nothing in this section is intended to conflict with Tax Code, §1.111(b). An appraisal district shall permit an agent who has been properly authorized to act on behalf of the property owner to represent the owner as provided by the authorization.

(d) - (m) (No change.)

(n) Forms 50-162, 50-241-1, and 50-163 are adopted by reference. Copies of the forms may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. [~~From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2007.

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Martin Cherry
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §§190.1 - 190.3, 190.7

The Texas Bond Review Board (BRB) proposes amendments to 34 TAC §§190.1 - 190.3 and §190.7, concerning Allocation of State's Limit on Certain Private Activity Bonds. Texas Government Code Chapter 1372 was amended by the Texas Legislature 80th Regular Session, Senate Bill 1332 and House Bill 3552 effective September 1, 2007. The proposed amendments to the rules are to address the changes in Texas Government Code Chapter 1372.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments of these sections.

Mr. Kline has also determined that for each year of the first five years the amendments are in effect the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small businesses. There is no additional anticipated economic cost to persons to comply with the amendments of these sections.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to *kline@brb.state.tx.us* or faxed to (512) 475-4802.

The amendments are proposed under Texas Government Code §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The proposed amendments implement the Texas Government Code Chapter 1372.

§190.1. General Provisions.

(a) - (b) (No change.)

(c) Definition of terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No change.)

(13) Carryforward--

(A) Traditional Carryforward--The amount of the state ceiling not reserved before December 15 and any amount previously reserved that becomes available on or after that date because of a reservation cancellation.

(B) Non-Traditional Carryforward--The amount of state ceiling reserved by an issuer and granted by the Board for a specific purpose and the closing date extends beyond the year in which the reservation was granted.

(14) - (32) (No change.)

(33) Local population--The population in the local government unit or units on whose behalf a housing finance corporation is created [~~as determined by the most recent federal census estimate~~]. If two local government units overlap, each having created housing finance corporations with the power to issue bonds to provide home mortgage financing, prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local government unit that portion of the population of any smaller local government unit having a population [~~as determined by the most recent federal census estimate~~] of 20,000 or more which is within the larger local government unit, unless the smaller local government unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local government unit. A resolution assigning authority to issue qualified mortgage bonds must have been adopted within the twelve months preceding the date of submission of the application to the board.

(34) - (35) (No change.)

(36) Population--As defined by §311.005(3) of the Texas Government Code.

(37) [~~(36)~~] Prepayments--Reduction of the principal amount of a loan that was originated from bond proceeds resulting in a corresponding reduction of the principal amount of the bond proceeds.

(38) [~~(37)~~] Private activity bond--A private activity bond within the meaning given that term under the code.

(39) [~~(38)~~] Program year--A calendar year.

(40) [~~(39)~~] Project--A project as defined by §1372.002, described in the [~~Any eligible facility, as described in the~~] application for reservation or carryforward, proposed to be financed, in whole or in part, by an issue of bonds. With respect to qualified mortgage bonds or qualified student loan bonds, the board shall consider the project or purpose to be the provision of financial assistance to qualifying mortgagors or students within all or any portion of the jurisdiction of the issuer. For purposes of this definition, jurisdiction of the issuer is determined on the date the application for reservation is delivered to the board.

(41) [~~(40)~~] Qualified application--A completed application for reservation or an application for carryforward.

(42) [~~(41)~~] Qualified bond--A qualified bond within the meaning given that term under the Code.

(43) [~~(42)~~] Qualified mortgage bond--A qualified mortgage bond within the meaning given that term under the Code, including mortgage credit certificates.

(44) [~~(43)~~] Qualified residential rental project issue--An issue of bonds for a qualified residential rental project, as that term is defined under the Code, §142(d).

(45) [~~(44)~~] Qualified small issue bond--A bond within the meaning given that term under the Code.

(46) [~~(45)~~] Qualified student loan bond--A bond within the meaning given that term under the Code, §144(b).

(47) [~~(46)~~] Qualified water development bond--A bond within the meaning given that term under §1372.001(18).

(48) [~~(47)~~] Related person--Related person within the meaning given that term under the Code.

(49) [~~(48)~~] Reservation--A reservation of a portion of the state ceiling for a specific bond issue.

(50) [~~(49)~~] Reservation date--The earliest date on which a qualified application for reservation is accepted for filing with the board pursuant to the Act and a portion of the state ceiling is or becomes available to the issuer.

(51) [~~(50)~~] Rules--Any statement of general applicability that implements, interprets, or prescribes law or policy, or describes the board's procedures and practice.

(52) [~~(51)~~] Significant expenditures--Expenditures greater than the lesser of $1 million or 10% of the reasonably anticipated cost of the project.

(53) [~~(52)~~] Staff--The staff of the board.

(54) [~~(53)~~] State--The State of Texas.

(55) [~~(54)~~] State ceiling--The amount of the authority in the state to issue tax exempt private activity bonds during the calendar year, as determined under the Code.

(56) [~~(55)~~] State-voted issue--An issue of bonds authorized pursuant to a statewide referendum approved by the voters of the state.

(57) [~~(56)~~] Tax-exempt enterprise zone facility bonds--An issue of bonds for an enterprise zone facility, as that term is defined under the Code, §1394.

(58) [~~(57)~~] Unexpended proceeds--Proceeds remaining from a prior issue of bonds, including, in the case of qualified mortgage bonds, any unused portion of mortgage credit certificates.

(d) - (f) (No change.)

§190.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after October 5 of the year preceding the applicable program year, the board will accept applications for reservation from

issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 2 of the program year. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in §1372.022, the board shall conduct a lottery establishing the priority order of each such application for reservation. Once the priority order for all applications for reservation filed on or before October 20 of the year preceding the applicable program year is established, except as provided by §1372.031(b) and subject to §1372.0321 and §1372.0231 reservations for each issuer within the categories described in §1372.022(a)(2), (3), (4), and (6), shall be granted in the order of priority established by such lottery. If determined by staff as necessary [~~more than 10 applications by issuers, other than issuers of state voted issues, are granted a reservation initially,~~] an additional lottery may [~~will~~] be held immediately to stagger [~~determine staggered~~] reservation dates for such issuers; otherwise, reservations shall be staggered by priority and then lot number. Each issuer of state voted issues granted a reservation initially may participate in the additional lottery or shall be granted a reservation date which is the first business day of the program year.

(c) (No change.)

(d) The order of priority for reservations in the category described in §1372.022(a)(4) shall further be determined as provided in §1372.0321 and §1372.0231.

(1) The first category of priority shall include those applications for a reservation for:

(A) - (C) (No change.)

(D) on June 1 and after, projects that were submitted for the lottery, and are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family income levels below or at the median family income for the state according to the U.S. Department of Housing and Urban Development.

(2) The second category of priority shall include those applications for a reservation for a project in which the maximum allowable rents are restricted to 30% of 60% area median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for at least 80% [~~100%~~] of the units.

(3) - (5) (No change.)

(e) - (j) (No change.)

(k) The amount of the state's ceiling that has not been reserved prior to December 1 of the program year and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as traditional carryforward for the carryforward purposes outlined in the Code through submission of the application for carryforward and any other required documentation. If the 120-day, 150-day, or 180-day period, as applicable, expires on or after December 24th of a program year in which a reservation was issued, an issuer is required to close on its bonds before December 24th. However, if an issuer's applicable period expires after December 31st, the issuer must [~~may elect to~~] notify the board in writing before December 24th of their intent to request non-traditional carryforward designation of [~~carry forward~~] the reservation and with their expected bond closing date. The granting by the board of a non-traditional carryforward designation through this described process, will allow an issuer the remaining balance of their 120-day, 150-day, or 180-day period as applicable to close on their bond by the expected closing date. If any issuer makes this election and does not close the bonds on or before the expected closing date, the amount of non-traditional carryforward designation will be administered by the board in compliance with the requirements of the code.

(l) - (o) (No change.)

(p) For applications for reservations in the category described in §1372.022(a)(5):

(1) Applications [~~Commencing with calendar year 2004, applications~~] for reservations in the category described in §1372.022(a)(5) must be filed in the preceding year during the time period established by the board for applications qualifying for the lottery.

(2) - (4) (No change.)

(5) No issuer in the category described in §1372.022(a)(5) shall be granted a reservation that exceeds "annual need" as defined by §1372.033(2).

(q) Until August 1 of the program year, within the category described by §1372.022(a)(6), priority shall be granted to the Texas Economic Development Bank for projects that the Texas Economic Development and Tourism Office determines meet the governor's criteria for funding from the Texas Enterprise Fund, pursuant to the requirements of §1372.031(b).

§190.3. Filing Requirements for Applications for Reservation.

(a) (No change.)

(b) Application Filing. The issuer shall submit one original and one copy of the application for reservation. Each application must be accompanied by the following:

(1) - (6) (No change.)

(7) a statement by the issuer, other than an issuer of a state-voted issue or the Texas Department of Housing and Community Affairs (TDHCA) or the Texas Agricultural Finance Authority (TAFA), that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, or based on the issuer's population;

(8) - (16) (No change.)

(c) - (f) (No change.)

(g) Application restrictions.

(1) - (3) (No change.)

(4) Except as provided by §1372.037(b) for any one project, no issuer, prior to August 15 [~~September 1~~] of the program year, no issuer may apply for an amount that exceeds [~~may exceed~~] the following maximum application limits:

(A) $25,000,000 for issuers described by §1372.022(a)(1) other than the Texas Department of Housing and Community Affairs and the Texas State Affordable Housing Corporation;

(B) - (E) (No change.)

(F) $50 [~~$25~~] million for issuers described by §1372.022(a)(6).

(5) - (8) (No change.)

§190.7. Cancellation, Withdrawal and Penalty Provisions.

(a) (No change.)

(b) If the closing documents are not received within five business days after the closing as described in §190.3(e) of this title, the issuer's reservation is cancelled and during the 120 [~~150~~]-day period beginning on the reservation date of the cancelled reservation for applications within the categories described by §1372.022(a)(3), (5) and (6), the 150 [~~180~~]-day period for an application within the category described by §1372.022(a)(4) and the 180 [~~210~~]-day period for an application within the category described by §1372.022(a)(1) and (2);

(1) - (2) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706220
Leslie Lawler
Assistant Attorney General
Texas Bond Review Board
Earliest possible date of adoption: January 20, 2008
For further information, please call: (512) 475-4800

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.256

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services withdraws the proposed repeal of §289.256 which appeared in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3115).

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706200
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

25 TAC §289.256

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services withdraws proposed new §289.256 which appeared in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3115).

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706201
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 7, 2007
For further information, please call: (512) 458-7111 x6972

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER C. VOTING SYSTEMS

1 TAC §§81.40, 81.41, 81.48, 81.53

The Office of the Secretary of State, Elections Division, adopts the repeal of 1 TAC §§81.40, 81.41, 81.48, and 81.53, concerning voting systems, without changes to the proposal as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7363).

The rules were rendered obsolete by §122.001(d) of the Texas Election Code.

The repeal of §81.40, concerning voting system sample ballots, is necessary to delete references to punch card and mechanical voting systems. Use of a punch card or mechanical voting system in an election is now prohibited.

The repeal of §81.41, concerning voting system specimen ballots, is necessary because use of a punch card ballot or similar form of tabulating card or a mechanical voting system in an election is now prohibited.

The repeal of §81.48, concerning preservation of the write-in record on mechanical voting systems, is necessary because use of a mechanical voting system in an election is now prohibited.

The repeal of §81.53, concerning preservation of punch card ballot label assembly, is necessary because the use of a punch card ballot or similar form of tabulating card in an election is prohibited.

No comments were received concerning the repeal.

The repeal is adopted under §31.003 and §128.001(c) of the Texas Election Code, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706210

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: December 27, 2007

Proposal publication date: October 19, 2007

For further information, please call: (512) 463-5650

♦ ♦ ♦

SUBCHAPTER E. ELECTION DAY PROCEDURES

1 TAC §81.84, §81.85

The Office of the Secretary of State, Elections Division, adopts the repeal of 1 TAC §81.84 and §81.85, concerning election day procedures, without changes to the proposal as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7363).

The rules were rendered obsolete by §122.001(d) of the Texas Election Code. The challenge procedures have been superseded by provisional voting, making the rules unnecessary.

No comments were received concerning the repeal.

The repeal is adopted under §31.003 and §128.001(c) of the Texas Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706211

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: December 27, 2007

Proposal publication date: October 19, 2007

For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.703

The Texas Health and Human Services Commission (HHSC) adopts new §351.703, relating to the establishment of a grant program for regional and local health care programs, without changes to the proposed text as published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6469) and will not be republished.

Section 13 of Senate Bill (S.B.) 10, 80th Legislature, Regular Session, 2007, codified at Title 2, Health and Safety Code, Chapter 75, Subchapter E, allows HHSC to develop a grant program to support the initial establishment and operation of regional or local health care programs. While not required by S.B. 10, a rule is necessary to establish guidelines for the grant program and to ensure that the grantmaking process is transparent for HHSC's stakeholders and prospective grantees. The adopted rule defines regional and local health care programs and provides for the competitive award of grants to support the initial establishment and operation of regional or local health care programs.

HHSC received one comment regarding the proposed rule during the 30-day comment period, which included a public hearing on October 3, 2007. A summary of the comment and HHSC's response follows.

Comment

HHSC received a comment from Texas Communities Health-Care Coalition in which the commenter expressed support for the rule provided that the rule allows grant funds to be used for premium subsidies and also allows a coalition of organizations to apply together for grant funding, with one organization designated as the contractor.

HHSC Response

HHSC believes the rule allows for the both of the requests from the commenter. Therefore, HHSC did not modify the rule to address this comment.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021; and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706109
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 25, 2007
Proposal publication date: September 21, 2007
For further information, please call: (512) 424-6900

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CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.407

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.407, relating to Requirements of Managed Care Plans, with changes to the proposed text as published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6471). The text of the rule will be republished.

Currently, Medicaid managed care organizations (MCOs) are required to reimburse Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) for healthcare services provided to MCO members outside of regular business hours (i.e., before 8 a.m. and after 5 p.m., Monday through Friday, and during weekends and federal holidays), even if the member does not have a referral from his or her primary care provider (PCP). This amendment, required by H.B. 1579, 80th Legislature, Regular Session, 2007, has two parts. First, the amendment extends the reimbursement requirement to include healthcare provided to members in the primary care case management (PCCM) program. Second, the amendment adds municipal health departments' public clinics to the types of providers that must be reimbursed. As a result of the amendment, MCOs will be required to reimburse FQHCs, RHCs, and municipal health department public clinics for services provided to MCO and PCCM members outside of regular business hours, regardless of whether the member has a referral from his or her PCP.

On adoption, a non-substantive, technical change was made to §353.407 (b) to correct the citation to the source of the definition of "outside of regular business hours." The correct citation is to §353.2(55).

HHSC received one comment regarding the proposed rule during the 30-day comment period, which included a public hearing on October 3, 2007. A summary of the comment and HHSC's response follows.

Comment

HHSC received a comment from the Coalition for Nurses in Advanced Practice of Austin, Texas, concerning 1 TAC §353.407. The Coalition's concern was that use of "primary care physician" would exclude Advanced Practice Nurses as health care providers in Medicaid managed care.

HHSC Response

HHSC agrees with the commenter and modified the rule to address the comment. HHSC changed the reference from "primary care physician" in the rule to "primary care provider" to reflect the fact that Advanced Practice Nurses, in addition to physicians, may be primary care providers for Medicaid members.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and H.B. 1579, 80th Legislature, Regular Session, 2007.

§353.407. Requirements of Managed Care Plans.

(a) Entities or individuals who subcontract with a Managed Care Organization (MCO) to provide benefits, perform services, or carry out any essential function of the MCO contract shall meet the

same qualifications and contract requirements as the MCO for the service, benefit, or function delegated under the subcontract.

(b) Primary Care Case Management (PCCM) and MCOs must reimburse a Federally Qualified Health Center (FQHC), a Rural Health Clinic (RHC), or a municipal health department's public clinic for healthcare services provided to a member outside of regular business hours, as defined at §353.2(55) of this title, at a rate that is equal to the allowable rate for those services as determined under §32.028(e) and (f), Human Resources Code, if the member does not have a referral from the member's primary care provider.

(c) The Commission will require all MCOs to comply with the Commission's policy on contracting and subcontracting with historically underutilized businesses (HUBs). The Commission's policy is to meet the goals and good faith effort requirements as stated in the Comptroller of Public Accounts rules at 34 TAC §§20.11 - 20.28 (relating to Historically Underutilized Business Program).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706110
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 25, 2007
Proposal publication date: September 21, 2007
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the department) adopts amendments to §18.236, concerning dairy animals on certified organic livestock operations; §18.600, concerning evaluation criteria; and §18.702, concerning fees, and the repeal of §§18.601 - 18.606, concerning the list of allowed and prohibited substances for organic production and processing, and §18.701, concerning the Organic Certification Advisory Committee, without changes to the proposal published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7793). These amendments and repeals are adopted to bring the Texas Organic Standards and Certification regulations into conformity with revisions to the National Organic Program regulations (7 CFR Part 205) that were published in the Federal Register in 2005-2007. The need for conformity in these regulations is specified in §205.501(a)(3) of the National Organic Program (NOP) regulations, which requires that organic certification agents accredited by the NOP must certify to standards that are in accordance with the NOP regulations. Consistency with the National Organic Standards is also required in Texas Agriculture Code (the Code), §18.002, which provides that rules for the certification of organic products adopted by the department must be consistent with the provisions of the National Organic Program. The consistency between state rules with federal regulations will also result in less confusion for the regulated industry and the interested members of the public.

The amendment to §18.236 is adopted to maintain consistency with the National Organic Standards regarding the origin of dairy animals on certified organic livestock operations by eliminating the allowance of 20% non-organically produced feed for dairy animals during the first 9 months of the conversion of a whole dairy herd from conventional to organic production. The changes also allow forage and crops from land that is in the farm's organic system plan, and in the third year of organic management, to be consumed by the farm's dairy animals during the 12 months immediately preceding the sale of organic milk and organic milk products.

The adopted repeal of §§18.601 - 18.606 eliminates the need for frequent rule changes to maintain consistency with the National Organic Standards regarding the List of Allowed and Prohibited Substances and allows for the adoption by reference of 7 CFR Part 205, §§205.601 - 205.606 of the NOP regulations (the National List) in place of the existing text of §§18.601 - 18.606. This adopted amendment was made due to changes to the NOP regulations that will result in additions to the National List as frequently as multiple times annually. Adoption of these sections by reference will save the department from making correspondingly frequent changes to §§18.606 - 18.606 in order to maintain consistency with the National Organic Standards.

The adopted repeal of §18.701 eliminates an advisory committee established in rule that has been replaced by a new advisory committee established by the 80th Legislature in H.B. 2345. Two organic advisory bodies are not necessary, and would be duplicative. The new board will address the organic regulatory issues of the previous committee as well as take on additional duties as specified by the Legislature. The amendment of §18.702(b)(2) is adopted to remove an obsolete provision in the rule that allowed for a prorated fee for organic handlers when the annual certification update due date was changed from December 31 to August 31 in 2004.

No comments were received on the proposal.

SUBCHAPTER C. ORGANIC PRODUCTION AND HANDLING REQUIREMENTS

4 TAC §18.236

The amendments to §18.236 are adopted under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706213

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 27, 2007
Proposal publication date: November 2, 2007
For further information, please call: (512) 463-4075

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SUBCHAPTER F. ADMINISTRATIVE
DIVISION 1. THE LIST OF ALLOWED AND PROHIBITED SUBSTANCES

4 TAC §18.600

The amendment of §18.600 is adopted under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706214
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 27, 2007
Proposal publication date: November 2, 2007
For further information, please call: (512) 463-4075

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4 TAC §§18.601 - 18.606

The repeal of §§18.601 - 18.606 is adopted under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706215
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 27, 2007
Proposal publication date: November 2, 2007
For further information, please call: (512) 463-4075

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DIVISION 5. MISCELLANEOUS PROVISIONS

4 TAC §18.701

The repeal of §18.701 is adopted under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706216
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 27, 2007
Proposal publication date: November 2, 2007
For further information, please call: (512) 463-4075

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4 TAC §18.702

The amendment of §18.702 is adopted under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products that are consistent with the provisions of the National Organic Program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706217
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: December 27, 2007
Proposal publication date: November 2, 2007
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 33. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§33.1 - 33.10

The Texas Department of Housing and Community Affairs adopts the repeal of Chapter 33, §§33.1 - 33.10, concerning the 2006 Multifamily Housing Revenue Bond Rules. The repeal is adopted without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5871) and will not be republished.

The sections are adopted for repeal in order to promulgate new sections addressing the Department's 2008 Multifamily Housing Bond Program and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Public hearings concerning the repeal were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the repeal of the rule were accepted by mail, e-mail, and facsimile through October 10, 2007.

No comments were received regarding adoption of this repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706243
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 30, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 475-3916

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CHAPTER 33. 2008 MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§33.1 - 33.10

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 33, §§33.1 - 33.10, concerning the 2008 Multifamily Housing Revenue Bonds Rules. Sections 33.1, 33.3, and §§33.6 - 33.8, are adopted with changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5871). Sections 33.2, 33.4, 33.5 and §§33.9 -33.10 are adopted without changes and will not be republished.

The new chapter implements changes that will improve the 2008 Private Activity Bond Program and implement changes enacted during the 80th Regular Session of the Texas Legislature.

Public hearings on the new rule were held in El Paso (September 24, 2007), Lubbock (September 28, 2007), Brownsville (October 3, 2007), Houston (September 26, 2007), Dallas (October 1, 2007), and Austin (October 4, 2007). Additionally, written comments on the proposed new rule were accepted by mail, e-mail, and facsimile through October 10, 2007.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the sections appear in new Chapter 33, starting with general comments for Chapter 33 as a whole, and ending with comments on §33.10. Following the section number is the title of the section as it appears in the rule. Following the title is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. The key relating each number to a particular commenter is found in an addendum attached to this order. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Public comments on the proposed amendments were received by: (4) Catellus Development Group; (13) Coats | Rose; (16) Doublekaye Corp.; (19) Foundation Communities; (20) Lancaster Pollard; (32) Locke Lord Bissell and Liddell LLP; (33) Mark-Dana Corporation; (36) NRP Group; (39) Representative Eddie Rodriguez; (40) Rural Rental Housing Association of Texas; (42) S. Anderson Consulting; (44) Texas Affiliation of Affordable Housing Providers; (45) Texas Legal Services Center; (47) Tropicana Building Corporation; (49) Viola Salazar.

§33.3 (28) - Definitions - Rural Area.

COMMENT (16,20,40): Comment suggested that this definition not be changed as proposed, but that the 2007 definition be used. Commenters asserted that the definition, as proposed, would cause a substantial percentage of existing USDA 515s not to be considered to be rural developments because of the 50,000 population maximum.

STAFF RESPONSE: The definition of Rural Area reflects the definition established in statute (§2306.004) and is applied consistently to all Department programs. Staff recommends no change.

§33.6(d)(14) - Pre-Application Threshold Requirements.

COMMENT (45): Comment requested that the utility allowance documentation from the local housing authority approving the utility allowance be no more than 12 months old.

STAFF RESPONSE: The utility allowances submitted with the application should be the most current. Staff will use the most current utility allowances that are available even if it is after the application has been submitted. Staff recommends the following change to the proposed language:

(14) Current utility allowance documented from the appropriate Local Housing Authority. If updated utility allowances become available after the application is submitted then it is the responsibility of the Applicant to submit the documentation to the Department.

§33.6(d) Pre-Application Threshold Criteria - Threshold Amenities.

COMMENT (45): Comment suggested that the amenities provided as a part of threshold criteria serve the needs of the disabled. Comment suggested that 10% of units serving family populations and 20% of units serving elderly populations be compliant with the Americans with Disabilities Act of 1990.

STAFF RESPONSE: Staff agrees that all Developments be compliant with ADA requirements. Staff recommends no change.

§33.6(d)(17)(C) Pre-Application Threshold Criteria - Amenities, Dishwasher and Disposal.

COMMENT (33,36,40,44,49): Comment stated that requiring new dishwashers is excessive and wasteful for rehabilitation development, particularly in rural areas. Additional comment asserted that disposals do not have energy star ratings and requested clarification on this requirement.

STAFF RESPONSE: The Bond rule does not require new dishwashers, but rather requires Energy Star or equivalently rated dishwashers. Staff feels that energy efficient dishwashers are a desirable amenity to all tenants, even those in rehabilitation and rural developments.

Staff concurs with the attestation that garbage disposals do not have Energy Star or equivalent ratings. Staff recommends the following language:

(17)(C) Disposal and Energy-Star or equivalently rated dishwasher (not required for TRDO-USDA or SRO Developments).

§33.6(d)(17)(D) Pre-Application Threshold Criteria - Amenities, Refrigerator.

COMMENT (49): Comment stated that requiring new refrigerators is excessive and wasteful for rehabilitation development, particularly in rural areas.

STAFF RESPONSE: The Bond rule does not require new refrigerators, but rather requires Energy Star or equivalently rated refrigerators. Staff feels that energy efficient refrigerators are a desirable amenity to all tenants, including those in rehabilitation and rural developments.

§33.6(d)(17)(E) Pre-Application Threshold Criteria - Amenities, Oven.

COMMENT (49): Comment stated that requiring new ovens is excessive and wasteful for rehabilitation development, particularly in rural areas.

STAFF RESPONSE: The Bond rule does not require new ovens, but rather requires Energy Star or equivalently rated ovens. Staff feels that energy efficient ovens are a desirable amenity to all tenants, including those in rehabilitation and rural developments.

§33.6(d)(17)(G) Pre-Application Threshold Criteria - Amenities, Ceiling Fans.

COMMENT (19, 49): Comment stated that requiring new ceiling fans is excessive and wasteful for rehabilitation development, particularly in rural areas. Additional comment suggested that flexibility be allowed for rehabilitation and renovation developments with regard to the ceiling fan requirement.

STAFF RESPONSE: The Bond rule does not require new ceiling fans, but rather requires Energy Star or equivalently rated ceiling fans. Staff feels that energy efficient ceiling fans are a desirable amenity to all tenants, including those in rehabilitation and rural developments. Staff recommends no change.

§33.6(d)(17)(I) Pre-Application Threshold Criteria - Amenities, Emergency 911 Telephones.

COMMENT (49): The comment asserted that requiring 911 telephones could bar development in some rural areas because 911 access is often not available in rural areas.

STAFF RESPONSE: Staff understands the problem with 911 access; however, staff believes that a public phone is a necessary amenity. Staff recommends the following change to the proposed language:

(I)"Emergency 911 or public telephone accessible and available to tenants 24 hours a day."

§33.6(e)(L) Pre-Application Scoring Criteria - Amenities, Ceiling Fans.

STAFF COMMENT: Staff deleted ceiling fans as a scoring item in this section since it is now a required threshold unit amenity.

§33.6(e)(DD) Pre-Application Scoring Criteria - Amenities, Fitness Center.

COMMENT (49): Comment suggested that the number of fitness machines required be dependent on the number of Units in a Development because a large number of machines is not justifiable for smaller developments.

STAFF RESPONSE: Staff concurs and recommends the following language:

(DD) Furnished fitness center equipped with a minimum of two of the following fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair climber, etc.) The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points).

§33.6(e)(QQ) Pre-Application Scoring Criteria - Amenities, Green Building.

COMMENT (33,36,44,47): Comment requested clarification regarding which features may qualify for this item and suggested that a test of monetary equivalency be applied so that only those features with similar cost be allowed to receive the same amount of points. Additional comment suggested that evaporative coolers be included in this item. The commenter asserted that evaporative coolers are accepted by the EPA, IRS, and RESNET in the federal energy credit.

STAFF RESPONSE: Staff concurs that a test of monetary equivalency is reasonable; however, the development of such a test would involve considerable research by staff. Within the time frame for approval of the final 2008 QAP, sufficient research could not be conducted, nor all issues vetted. Therefore, staff recommends this issue be addressed for the 2009 QAP, giving the applicant community and staff ample time to conduct the necessary research, and giving all parties an opportunity to comment prior to the adoption of the rule. Staff does concur with the addition of evaporative coolers to the list of green building items allowed for threshold points. Staff recommends the following change to the proposed language:

(QQ) Green Building (for example, passive solar heating/cooling, water conserving fixtures, collected water (at least 50%) for irrigation purposes, sub-metered electric meters, exceed energy star standards, photovoltaic panels for electricity and design and wiring for the use of such panels, construction waste management, provide recycle service, water permeable walkways, evaporative coolers, and parking areas, or other Department approved items) (3 points).

§33.6(e)(11)(F) Pre-Application Scoring Criteria - Negative Site Features, Sexually Oriented Businesses.

COMMENT (33,36,40,44): Comment requested clarification of what constitutes a sexually oriented business.

STAFF RESPONSE: Staff concurs and proposes the following language:

(F) Developments where the buildings are located adjacent to or within 300 feet of a sexually oriented business will have 1 point deducted from their score. For the purpose of this clause, sexually oriented business shall be defined as stated in §243.002 of the Texas Government Code.

§33.6(e)(11)(G) Pre-Application Scoring Criteria - Negative Site Features, Accident Zones or Flight Paths of Airports.

COMMENT (4,13,32,33,36,39,40,42,44): Comment suggested that "flight path" is too broad a term and that a development's location in an airport "clear zone" should trigger a point deduction under negative site features. Additional comment suggested that point deductions for location in a "flight path" be deleted from the QAP, and pointed out that flight path maps are not available to the public, or as an alternative, that a definition for flight path be established. The commenter asserted that sites within flight paths but far from active airports are not at risk of accidents and excessive noise. Further comment asserts that the environmental assessment required by the Department includes a noise study that is a good indicator of the impact of noise, and is more appropriate than deducting points. Other comment suggested that the term "flight path" lacks specificity and that some FAA standard should be used. Comment suggested that a limitation on the location of a development in the flight patch closest to the airport, for example within a 1 mile radius, in urban areas. Comment also suggested that if there is existing residential development near the development proposed in a flight path, the development should be permitted.

STAFF RESPONSE: The Department has conducted research regarding a definition for "flight path" and concurs with comment that a clear definition or list of such areas is not readily available from any agency that regulates air traffic or from local airports. Therefore, staff recommends the following revision to the proposed language:

(G) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports.

§33.6(h)(1) - Final Application - Public Notification Signage.

COMMENT (36): Comment requested that the proposed language requiring a sign to be posted unless prohibited by local ordinance be stricken. The commenter asserts that the applicant should be able to choose between posting a sign and mailing notifications, and that written notifications ensure that those most affected by the proposed development are notified.

STAFF RESPONSE: It is the Department's position that the public is better served by the posting of a public sign, as opposed to mailed notifications. A sign provides truly public notification, while mailed notifications may be used to reduce public knowledge of a development and circumvent the public nature of the required notification. Staff recommends no change.

The Board approved the final order adopting these amendments, as well as administrative changes as needed for consistency within this Chapter, on November 8, 2007.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code, Subchapters P through W, which authorize the Department to issue bonds and prescribes the Governing Board action required, establish bond terms, security for bonds, approval, registration and execution of bonds, rights and remedies of bondholders, obligations of the Department and the state, and other requirements.

§33.1. Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2008 Private Activity Bond Program Year. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan and Rules ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general pubic to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

§33.3. Definitions.

The following words and terms, when used in the chapter, shall have the following meaning, unless context clearly indicates otherwise.

(1) Adaptive Reuse--As defined in §50.3(1) of this title.

(2) Administrative Deficiency--As defined in §50.3(2) of this title.

(3) Applicant--As defined in §50.3(7) of this title.

(4) Application--As defined in §50.3(8) of this title.

(5) Board--The Governing Board of the Department.

(6) Bond--An evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.

(7) Code--The U. S. Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service.

(8) Development--As defined in §50.3(32) of this title.

(9) Development Owner--As defined in §50.3(35) of this title.

(10) Eligible Tenants--

(A) Individuals and families of Extremely Low, Very Low and Low Income;

(B) Families of Moderate Income (in each case in the foregoing subparagraphs (A) and (B) of this paragraph as such terms are defined by the Issuer under the Act); and

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard

metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(11) Extremely Low Income--The income received by an individual or family whose income does not exceed thirty percent (30%) of the area median income or applicable federal poverty line, as determined by the Act.

(12) Family of Moderate Income--A family:

(A) that is determined by the Board to require assistance taking into account:

(i) the amount of total income available for the housing needs of the individuals and family;

(ii) the size of the family;

(iii) the cost and condition of available housing facilities;

(iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(v) standards established for various federal programs determining eligibility based on income; and

(B) that does not qualify as a family of Low Income.

(13) Ineligible Building Type--As defined in §50.3(56) of this title.

(14) Institutional Buyer--

(A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §§230.501(a)(4) - (6)); or

(B) A qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A).

(15) Intergenerational Housing--As defined in §50.3(57) of this title.

(16) Low Income--The income received by an individual or family whose income does not exceed eighty percent (80%) of the area median income or applicable federal poverty line, as determined by the Act.

(17) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of law, including this title, the Act and §42 of the Code.

(18) New Construction--As defined in §50.3(64) of this title.

(19) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(20) Persons with Special Needs--Persons who:

(A) are considered to be disabled under a state or federal law;

(B) are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program;

(C) are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(D) are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.

(21) Private Activity Bonds--Any Bonds described by §141(a) of the Code.

(22) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §33.6(e) of this chapter.

(23) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §33.6(d) of this chapter.

(24) Program--The Department's Multifamily Housing Revenue Bond Program.

(25) Proper Site Control--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.

(26) Property--The real estate and all improvements thereon, whether currently existing or proposed to be built thereon in connection with the Development, and including all items of personal property affixed or related thereto.

(27) Qualified 501(c)(3) Bonds--Any Bonds described by §145(a) of the Code.

(28) Rehabilitation--As defined in §50.3(81) of this title.

(29) Rural Area--An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) In an Area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000.

(30) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural new construction Developments with more than 80 units.

(31) Tenant Income Certification--A certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. §1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.

(32) Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §§601 et seq.), and other similar services.

(33) Tenant Services Program Plan--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(34) Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

(35) TRDO-USDA--As defined in §50.3(94) of this title.

(36) Unit--As defined in §50.3(95) of this title.

(37) Very Low Income--The income received by an individual or family whose income does not exceed sixty percent (60%) of the area median income or applicable federal poverty line as determined under the Act.

§33.6. Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section. The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section. After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's initial intent to issue Bonds (the "inducement resolution") with respect to the Development. After Board approval of the inducement resolution, the induced Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing in rank order. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order provided by the Department based on rank. The criteria by which a Development may be deemed to be eligible or ineligible are explained in subsection (j) of this section, entitled Eligibility Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website.

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. The TDHCA Board reviews the Development as a whole for adherence to timelines and notification rules in the Qualified Allocation Plan and Rules, the need for the Development, compliance with local government rules and procedures, financial feasibility and the input of local and state officials and interested community members. These factors and others will be used to make the final determination at the appropriate time. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the Application is presented to the Board.

(d) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected by the Applicant in the Application. Prequalification Assumptions:

(A) Development Feasibility:

(i) Debt Coverage Ratio must be greater than or equal to 1.15;

(ii) Deferred Developer Fees are limited to 80% of Developer's Fees;

(iii) Contractor Fee, Overhead and General Requirements are limited to 14% of direct costs plus site work cost; and

(iv) Developer Fees cannot exceed 15% of the project's Total Eligible Basis.

(B) Construction Costs Per Unit Assumption. Costs not to exceed $75 per Unit for general population developments and $85 for elderly developments (Acquisition/Rehab developments are exempt from this requirement);

(C) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;

(D) Size of Units (Acquisition/Rehab developments are exempt from this requirement):

(i) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units.

(ii) Two bedroom Unit must be greater that or equal to 900 square feet for family and 750 square feet for senior Units.

(iii) Three bedroom Unit must be greater than or equal to 1,000 square feet for family.

(iv) Four bedroom Unit must be greater than or equal to 1200 square feet for family.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through December 1, 2007 with option to extend through March 1, 2008 for lottery Applications or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting for waiting list and carryforward Applications. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting;

(4) Current Market Information (must support affordable rents);

(5) Completed current TDHCA Bond Pre-Application;

(6) Completed Multifamily Rental Worksheets;

(7) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information;

(8) Completed 2008 Bond Review Board Residential Rental Attachment;

(9) Signed letter of Responsibility for All Costs Incurred;

(10) Signed Mortgage Revenue Bond Program Certification Letter;

(11) Evidence of Paid Application Fees ($1,000 to TDHCA, $1,500 to Vinson and Elkins and $5,000 to Bond Review Board);

(12) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property;

(13) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius;

(14) Current utility allowance documented from the appropriate Local Housing Authority. If updated utility allowances become available after the application is submitted then it is the responsibility of the Applicant to submit the documentation to the Department;

(15) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Secretary of State; and

(16) Required Notification. Evidence of notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity, a sworn affidavit stating that they made all the required notifications prior to the deadlines and a copy of the entire mailing list (including names and complete addresses) of all the recipients. Proof of notification must not be older than three months prior to the Application submission date. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (F) of this paragraph, then the QAP and Rules will override the notification process listed in subparagraphs (A) - (F) of this paragraph):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under clause (i) of this subparagraph must be made by the deadlines described in that clause. Evidence of notification must meet the requirements identified in clauses (ii) and (iii) of this subparagraph.

(i) The Applicant must request Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(I) No later than twenty-one (21) days prior to the date the Application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Pre-Application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format.

(II) If no reply letter is received from the local elected officials by seven (7) days prior to the Application submission, then the Applicant must certify to that fact with the "Pre-Application Notification Certification Form" provided in the Pre-Application materials.

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(ii) No later than the date the Pre-Application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt in the format required in the "Pre-Application Notification Template" provided in the Pre-Application materials. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application materials. It is strongly encouraged that Applicants retain proof of notifications in the event the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(I) Neighborhood Organizations on record with the city, state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph;

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State representative of the district containing the Development; and

(IX) State senator of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction, Reconstruction, adaptive reuse or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing, or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded and Bonds are issued.

(17) All New Construction or Reconstruction units must provide the amenities in subparagraphs (A) - (I) of this paragraph. Rehabilitation (excluding Reconstruction) must provide the amenities in subparagraphs (B) - (I) of this paragraph unless expressly identified as not required (§2306.187).

(A) All new construction units must be wired with 6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit;

(B) Blinds or window coverings for all windows;

(C) Disposal and Energy-Star or equivalently rated dishwasher (not required for TRDO-USDA Developments);

(D) Energy-Star or equivalently rated Refrigerator;

(E) Energy-Star or equivalently rated Oven/Range;

(F) Exhaust/vent fans in bathrooms;

(G) Energy-Star or equivalently rated ceiling fans in living areas and bedrooms;

(H) Energy-Star or equivalently rated lighting in all Units; and

(I) Emergency 911 or public telephone accessible and available to tenants 24 hours a day.

(e) Pre-Application Scoring Criteria.

(1) Income and rent levels of the tenants: Priority 1 applications will receive 10 points, Priority 2 applications will receive 7 points and Priority 3 applications will receive 5 points.

(2) Construction Cost Per Unit includes: direct hard costs, site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to $75 per square foot for general population Developments and $85 per square foot for elderly Developments (1 point) (Acquisition/Rehab will automatically receive (1 point)).

(3) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family and must be greater than or equal to 750 square foot for elderly (5 points) (Acquisition/Rehab developments will automatically receive (5 points)).

(4) Period of Guaranteed Affordability for Low Income Tenants. Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).

(5) Quality and Amenities Substitutions in amenities will be allowed as long as the overall score is not affected. Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows: Acquisition/Rehab developments will receive 1.5 points for each item.

(A) Laundry Connections (2 points);

(B) Self-cleaning or continuous cleaning ovens (1 point);

(C) Microwave Ovens (in each Unit) (1 point);

(D) Refrigerator with icemaker (1 point);

(E) Laundry equipment (washer and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (3 points);

(F) Storage Room of approximately nine (9) square feet or greater which does not include bedroom, entryway or linen closets (does not have to be in the unit but must be on the property site) (1 point);

(G) Covered entries (1 point);

(H) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(I) Covered patios or covered balconies (1 point);

(J) Covered Parking (including garages) of at least one covered space per Unit (2 points);

(K) High speed internet service to all Units at no cost to residents (2 points);

(L) Fire sprinklers in all Units (2 points);

(M) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (3 points);

(N) Greater than 75% Masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco) (1 point);

(O) Thirty year architectural shingle roofing (1 point);

(P) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);

(Q) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);

(R) 14 SEER HVAC or evaporative coolers in dry climates for new construction, adaptive reuse and reconstruction or radiant barrier in the attic for the rehabilitation (excluding reconstruction) (3 points);

(S) One Children's Playscape Equipped for 5 to 12 years olds, or one Tot Lot (1 point);

(T) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);

(U) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(V) Enclosed sun porch or covered community porch/patio (2 points);

(W) BBQ Grills and Tables (at least one each per 50 Units) (1 point);

(X) Accessible walking path/jogging path separate from a sidewalk (1 point);

(Y) Full Perimeter Fencing (2 points);

(Z) Controlled access gate (1 point);

(AA) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, and 1 printer for every 3 computers (with a minimum of one printer), and 1 fax machine (2 points);

(BB) Furnished and staffed children's activity center (3 points);

(CC) Horseshoe pit, putting green or shuffleboard court (1 point);

(DD) Furnished Fitness Center equipped with a minimum of two of the following fitness equipment options with at least one per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, stationary weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);

(EE) Library with an accessible sitting area (separate from the community room) (1 point);

(FF) Gazebo with sitting area (1 point);

(GG) Covered Pavilion that includes barbeque grills and tables (2 points);

(HH) Swimming pool (3 points);

(II) Community laundry room with at least one front loading washer (1 point);

(JJ) Furnished Community room (1 point);

(KK) Service coordinator office in addition to leasing offices (1 point);

(LL) Senior Activity Room (Arts and Crafts, etc.) (2 points);

(MM) Health Screening Room (1 point);

(NN) Secured Entry (elevator buildings only) (1 point);

(OO) Community Dining Room with full or warming kitchen (3 points);

(PP) Community Theatre Room equipped with a 52 inch or larger screen with surround sound equipment, DVD player; and theatre seating (3 points);

(QQ) Green Building (for example, passive solar heating/cooling, water conserving fixtures, collected water (at least 50%) for irrigation purposes, sub-metered electric meters, exceed energy star standards, photovoltaic panels for electricity and design and wiring for the use of such panels, construction waste management, provide recycle service, water permeable walkways, evaporative coolers, and parking areas, or other Department approved items) (3 points);

(RR) Hot Tub/Jacuzzi Spa (1 point).

(6) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);

(A) $10.00 per Unit per month (10 points);

(B) $7.00 per Unit per month (5 points);

(C) $4.00 per Unit per month (3 points).

(7) Zoning appropriate for the proposed use or no zoning required appropriate zoning for the intended use must be in place at the time of Application submission date, September 4, 2007 (Applications submitted for lottery) or the submission dates listed on the Department's website for Applications submitted for waiting list and carryforward, in order to receive points (5 points).

(8) Proper Site Control (as defined in §33.3(25) of this chapter), through December 1, 2007 with option to extend through March 1, 2008 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting. For Applications submitted for waiting list and carryforward all information must be correct at the time of the Application submission date, September 4, 2007 for Applications submitted for lottery or the submission dates listed on the Department's website for Applications submitted for waiting list or carryforward, in order to receive points (5 points).

(9) Development Support/Opposition Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, October 1, 2007 for Applications submitted for lottery or fourteen (14) days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. The letter must specifically indicate support or opposition otherwise the letter will be considered neutral.

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(10) Proximity to Community Services/Amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services/amenities are located. (Acquisition/Rehab developments will receive 1.5 points for each item in subparagraphs (A) - (Q) of this paragraph).

(A) Full service grocery store or supermarket (1 point);

(B) Pharmacy (1 point);

(C) Convenience store/mini-market (1 point);

(D) Department or Retail Merchandise Store (Target, Wal-Mart, Home Depot, Bookstores, etc.) (1 point);

(E) Bank/Credit Union (1 point);

(F) Restaurant (including fast food) (1 point);

(G) Indoor public recreation facilities (community center, civic center, YMCA, museum) (1 point);

(H) Outdoor public recreation facilities (park, golf course, public swimming pool) (1 point);

(I) Fire/Police Station (1 point);

(J) Medical Offices (physician, dentistry, optometry) (1 point);

(K) Hospital/Medical Clinic (1 point);

(L) Public Library (1 point);

(M) Senior Center (1 point);

(N) Public Transportation (1/2 mile from site) (1 point);

(O) Public School (only one school required for point and only eligible with general population developments) (1 point);

(P) Dry Cleaners (1 point);

(Q) Family Video Rental (i.e. Blockbuster, Hollywood Video, Movie Gallery) (1 point).

(11) Proximity to Negative Features adjacent to or within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed in subparagraphs (A) - (G) of this paragraph within the stated area if that is correct. (maximum negative 7 points)

(A) Junkyards (1 point deducted);

(B) Active Railways (excluding light rail) (1 point deducted);

(C) Heavy industrial/manufacturing plants (1 point deducted);

(D) Solid Waste/Sanitary Landfills (1 point deducted);

(E) High Voltage Transmission Towers within 100 feet (1 point deducted);

(F) Sexually Oriented Business (for the purpose of this clause, sexually oriented business shall be defined as stated in §243.002 of the Texas Government Code) (1 point deducted);

(G) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports (1 point deducted).

(12) Acquisition/Rehabilitation Developments will receive thirty (30) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(13) Preservation Developments will receive ten (10) points. This includes rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which the there has been a rent restriction requirement in the past ten years. Evidence must be provided.

(14) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development site is located in an area declared to be a disaster under §418.014 of the Texas Government Code.

(15) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing developments that were awarded housing tax credits in the last 5 years and 3 points if there are no other existing developments that were awarded housing tax credits in the last 3 years. The applicant must provide evidence of the census tract in which the Development is located. These census tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

(16) Notary Public Services for Tenants. Applications will receive 1 point for this item (§2306.6710(b)(3)). To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.

(f) Multiple Site Applications. For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) Financing Commitments. After approval by the Board of the inducement resolution, and before submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the reservation date from the Texas Bond Review

Board. The Volume III of the Application and all third party reports as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the Rules for that program for Application submission requirements. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority, within thirty (30) days of the Department's receipt of Volumes I and II unless prohibited by local ordinance or code. The applicant must certify to the fact that the sign was installed within thirty (30) days of Volume I and II submission and the date, time and location of the Bond Tax Exempt Fiscal Responsibility Act (TEFRA) Public Hearing must be included on the sign at least thirty (30) days prior to the hearing date. The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. The final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. Evidence must be submitted in the Application affirming the signage violation to the local code and the local zoning notification requirements. The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, a decrease in the number of market rate units, or a change in the population being served (elderly, intergenerational or general population);

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website.

(i) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies within five business days will result in a penalty fee of $500 for each day the deficiency remains unresolved. Any Application with unresolved deficiencies after the 10th day from the issuance of the deficiency notice will be terminated. The Applicant will be responsible for the payment of any fees accrued pursuant to this section regardless of any termination pursuant to this section. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid.

(j) Eligibility Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) - (7) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

(A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or

(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score as set out in the Department's Compliance Monitoring Policies and Procedures (§60 of this title); or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(7) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51 percent or more of the residential units are located:

(A) in a county with a population of less than 75,000; or

(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites (§1372.002)

(k) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(l) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is an acquisition/rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

(1) The developer market study;

(2) The location;

(3) The compliance history of the developer;

(4) The financial feasibility;

(5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(6) The Development's proximity to other low income Developments;

(7) The availability of adequate public facilities and services;

(8) The anticipated impact on local school districts;

(9) Zoning and other land use considerations;

(10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(11) Other good cause as determined by the Board.

(m) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §§1.7 and 1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules 34 TAC Part 9, Chapter 181, Subchapter A and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

(n) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(o) Closing. If there are changes to the Application prior to closing that have an adverse affect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§33.7. Regulatory and Land Use Restrictions.

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. For Developments involving new construction, the term of the LURA will be the longer of 30 years, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible

in accordance with the Act, or the period for which Bonds are outstanding.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner of the Development. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

(A) at least twenty percent (20%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed fifty percent (50%) of the area median income, or

(B) at least forty percent (40%) of the Units within the Development that are available for occupancy shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed sixty percent (60%) of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that, should a tenant's income, as of the most recent determination thereof, exceed 140% of the then applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant. (Required federal set-aside requirements)

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed one hundred and forty percent (140%) of the area median income for a four-person household.

(e) Qualified 501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified 501(c)(3) Bonds are further subject to the restriction that at least seventy-five percent (75%) of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(h) Tenant Services. The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department.

(i) Land Use Restriction Agreement. Requirements as defined in Chapter 60, Subchapter A of this title.

§33.8. Fees.

(a) Application and Issuance Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $1,500 (payable to Vinson & Elkins, the Department's Bond Counsel) and $5,000 (payable to the Texas Bond Review Board (BRB)) These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code). At the time of full application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee (for multiple site Applications $10,000 or $30/unit, whichever is greater, for the bond application fee. At the closing of the bonds the following fees are required, an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a compliance fee equal to $40/unit.

(b) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements. The annual compliance fee is paid in advance and is equal to $40/unit beginning two years from the first payment date; the asset management fee is paid in advance and is equal to $25/unit beginning two years from the first payment date; both are adjusted annually for CPI. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid for a minimum of thirty (30) years or as long as the bonds are out standing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706242
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 30, 2007
Proposal publication date: September 7, 2007
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.301, 401.304, 401.305, 401.307, 401.308, 401.312, 401.315, 401.316

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC Chapter 401, §401.301 (relating to General Definition); §401.304 (relating to On-Line Game Rules (General)); §401.305 (relating to "Lotto Texas" On-Line Game Rule); §401.307 (relating to "Pick 3" On-Line Game Rule); §401.308 (relating to "Cash Five" On-Line Game); §401.312 (relating to "Texas Two Step" On-Line Game); §401.315 (relating to "Mega Millions" On-Line Game Rule); and §401.316 (relating to "Daily 4" On-Line Game Rule), without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6960).

The purpose of the amendments is to allow the on-line system to include a buffer period during which no new player selections or Quick-Pick selections could be entered into the on-line system but during which the on-line system could complete the processing of player selections or Quick-Pick selections already entered into the on-line system before the draw break. In other words, during the draw break, new transactions could not be initiated but transactions could be completed. The buffer would reduce the possibility of incomplete transactions. An incomplete transaction occurs when player selections or Quick-Pick selections are recorded in the on-line system but no ticket is produced at the retail location.

The adopted amendments to §401.301 (relating to General Definition) change the title of the section to "General Definitions" and redefine the term "draw break." The current definition of "draw break" is "[t]he period of time on a draw day when tickets cannot be sold, produced, or validated on an on-line terminal for the specific game." The adopted amendments change the definition to "[a] period of time before a drawing for an on-line game during which player selections for that drawing may not be entered into the on-line system and during which no requests for Quick Pick selections for that drawing may be entered into the on-line system."

The adopted amendments to §401.304 (relating to On-Line Game Rules (General)) clarify that a retailer's ability to sell on-line tickets may be impeded by draw breaks. The adopted amendments to §401.304 (relating to On-Line Game Rules (General)) also revise the language requiring the executive director to establish times for draw breaks. The purpose of the revision is to make clear that although a new transaction may not be initiated during a draw break, a transaction may be completed during a draw break.

The adopted amendments to §401.305 (relating to "Lotto Texas" On-Line Game Rule); §401.307 (relating to "Pick 3" On-Line Game Rule); §401.308 (relating to "Cash Five" On-Line Game); §401.312 (relating to "Texas Two Step" On-Line Game); §401.315 (relating to "Mega Millions" On-Line Game Rule); and §401.316 (relating to "Daily 4" On-Line Game Rule) eliminate references to draw break and a reference to a time period during which tickets may not be sold. Because §401.304 (relating to On-Line Game Rules (General)) requires the executive director to establish times for draw breaks for each on-line game, it is not necessary to include such a requirement in each specific on-line game rule.

No comments were received during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery. The section is also adopted under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2007.

TRD-200706150
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: December 26, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 344-5113

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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.101

The Texas Lottery Commission (Commission) adopts amendments to Title 16, Part 9, Chapter 403, §403.101 (relating to Open Records) with changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6964). Specifically, in the adopted version, the Commission changed the reference to the "Open Records Act" to the "Public Information Act" to reflect the correct title of the statute.

During the rule review process for Chapter 403, it was determined that parts of §403.101 needed updating due to other statutory changes to the Public Information Act. The purpose of the amendments is to clarify that charges to a person requesting reproductions of any readily available record of the Commission will be the charges established by rule in accordance with the

Texas Government Code Chapter 552, Subchapter F, and to change "Open Records Specialist" to "Open Records Coordinator."

No comments were received during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also adopted under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this adoption.

§403.101. Open Records.

(a) Charges for Copies of Public Records. The charges to any person requesting reproductions of any readily available record of the Texas Lottery Commission will be the charges established by rule in accordance with the Texas Government Code Chapter 552, Subchapter F.

(b) The agency may furnish public records without charge or at a reduced charge if the agency determines that waiver or reduction of the fees is in the public interest.

(c) Open Records Requests. The following guidelines apply to requests for records under the Public Information Act, Texas Government Code, Chapter 552.

(1) Requests must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the agency.

(4) Generally, unless confidential information is involved, review may be by physical access or by duplication, at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will only be provided the option of receiving copies.

(5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.

(7) All open records requests appointments will be referred to the agency's Open Records Coordinator before complying with a request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706179

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: December 27, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 344-5012

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16 TAC §403.301

The Texas Lottery Commission (Commission) adopts amendments to Title 16, Part 9, Chapter 403, §403.301 (relating to Historically Underutilized Businesses) without changes to the proposed text as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6965).

The purpose of the amendments is to adopt by reference the rules administered by the Comptroller of Public Accounts regarding historically underutilized businesses. Before September 1, 2007, the rules regarding historically underutilized businesses were administered by a different state agency and located in a different part of the Texas Administrative Code.

No comments were received during the public comment period.

The amendments are adopted under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also adopted under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction. The amendments are also adopted under Texas Government Code §2161.003 which requires a state agency to adopt the Historically Underutilized Businesses rules as the agency's own rules.

Texas Government Code, Chapter 466, is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2007.

TRD-200706152
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: December 26, 2007
Proposal publication date: October 5, 2007
For further information, please call: (512) 344-5113

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16 TAC §403.402

The Texas Lottery Commission (Commission) adopts the repeal of Title 16, Part 9, Chapter 403, §403.402 (relating to Exemption from Vehicle Inscription Requirements) without changes to the proposal as published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 6966).

The Commission is adopting the repeal of the rule because the Commission determined in the rule review process that there was no reason to readopt the rule. The rule is obsolete, no longer reflects current legal and policy considerations, and no longer re-

flects current procedures and practices of the Commission. The Commission no longer maintains surveillance vehicles and does not anticipating doing so in the future.

No comments were received during the public comment period.

The repeal is adopted under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The repeal is also adopted under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) adopts amendments to §§66.10, 66.27, 66.36, 66.48, 66.51, 66.54, 66.63, 66.66, 66.69, 66.72, and 66.101 and new §66.22, concerning instructional materials. The amendments to §§66.10, 66.48, 66.54, 66.69, 66.72, and 66.101 and new §66.22 are adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7180) and will not be republished. The amendments to §§66.27, 66.36, 66.51, 66.63, and 66.66 are adopted with changes to the proposed text as published in the October 12, 2007, issue. The sections address provisions relating to administrative penalties, state adoption of instructional materials, and local operations. The adopted amendments and new section incorporate recent legislative changes to the instructional materials review and adoption process.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date will allow the adopted amendments and new section to be in effect for Proclamation 2010 and Proclamation 2011, both of which are scheduled to be issued by the SBOE during the 2007-2008 school year. The effective date of the adopted amendments and new section is 20 days after filing as adopted.

House Bill (HB) 188, 80th Texas Legislature, 2007, made significant changes to the adoption and distribution of instructional materials. Legislative changes set forth in HB 188 include requirements that proclamations be titled to reflect the year that instructional materials will be made available in the classroom rather than the year in which the proclamation is issued and that the SBOE adopt rules for midcycle review and adoption of textbooks.

In July 2007, staff presented an overview of changes in several sections of 19 TAC Chapter 66 to the Committee of the Full Board. The proposed amendments and new section were discussed to address legislation resulting from the 80th Texas Legislature, 2007, and changes in the state adoption and distribution process. Additional recommendations for changes were made by board members. The SBOE held a work session in August 2007 to further discuss recent legislation and additional changes to 19 TAC Chapter 66.

In September 2007, the SBOE approved for first reading and filing authorization proposed amendments to 19 TAC Chapter 66, including proposed new 19 TAC §66.22, that incorporated recommendations from SBOE members resulting from the July 2007 meeting and the August 2007 work session. The adopted rule actions include language in response to HB 188 that would impact upcoming proclamations.

During its November 16, 2007, meeting, the SBOE approved for second reading and final adoption the proposed amendments and new section, as follows.

Section 66.10, Procedures Governing Violations of Statutes--Administrative Penalties, was amended to specify that prior SBOE approval is required for any content changes in electronic, web-based, or online instructional materials that a publisher lists in the State of Texas Official Publisher's Contract. No changes were made to this section since published as proposed.

New §66.22, Midcycle Review and Adoption, was adopted to establish provisions for the review and adoption of textbooks for a subject for which textbooks are not currently under review by the SBOE. The new section includes the provision that the SBOE will implement the midcycle review and adoption only to the extent that the commissioner of education determines that funds are appropriated for that purpose. The adopted new section also specifies that the midcycle review and adoption would follow the same procedures as the regular review and adoption. No changes were made to this section since published as proposed.

Section 66.27, Proclamation, Public Notice, and Schedule for Adopting Instructional Materials, was amended to establish that proclamations would be titled to reflect the year that instructional materials would be made available in the classroom. The section was also amended to address specific coverage of essential knowledge and skills and to incorporate provisions relating to a midcycle review. At its November 2007 meeting, the SBOE made a change to language in §66.27(c) to clarify requirements for coverage of essential knowledge and skills, in response to public comment.

Section 66.36, State Review Panels: Duties and Conduct, was amended to add specific direction to state review panels for evaluating instructional materials submitted for consideration for adoption. The new language references adherence to the Texas Education Code, §28.004(e)(5), relating to health education instruction; addresses specific coverage of essential knowledge and skills, including the requirement that essential knowledge

and skills be covered in the student version of the textbook as well as in the teacher version; and adds SBOE-approved procedures for evaluating coverage. At its November 2007 meeting, the SBOE made a change to language in §66.36(a)(1) to clarify requirements for coverage of essential knowledge and skills.

Section 66.48, Statement of Intent to Bid Instructional Materials, was amended to incorporate provisions relating to a midcycle review. No changes were made to this section since published as proposed.

Section 66.51, Instructional Materials Purchased by the State, was amended to address specific coverage of essential knowledge and skills. At its November 2007 meeting, the SBOE made a change to language in §66.51(a)(10) to clarify requirements for coverage of essential knowledge and skills.

Section 66.54, Samples, was amended to reinforce that, as established in proposed new §66.22(f), a publisher of a textbook submitted for midcycle review is not required to ship samples to education service centers. No changes were made to this section since published as proposed.

Section 66.63, Report of the Commissioner of Education, was amended to address specific coverage of essential knowledge and skills. At its November 2007 meeting, the SBOE made a change to language in §66.63(a)(1) to clarify requirements for coverage of essential knowledge and skills.

Section 66.66, Consideration and Adoption of Instructional Materials by the State Board of Education, was amended to address specific coverage of essential knowledge and skills. At its November 2007 meeting, the SBOE made a change to language in §66.66(c)(1) to clarify requirements for coverage of essential knowledge and skills.

Section 66.69, Ancillary Materials, was amended to add language related to SBOE requests concerning ancillary materials. No changes were made to this section since published as proposed.

Section 66.72, Preparing and Completing Contracts, was amended to incorporate provisions relating to a midcycle review. No changes were made to this section since published as proposed.

Section 66.101, Sample Copies of Instructional Materials for School Districts, was amended to reinforce that, as established in proposed new §66.22(f), a publisher of a textbook submitted for midcycle review is not required to ship samples to school districts. No changes were made to this section since published as proposed.

Following is the comment received and corresponding response regarding the proposal.

Comment. A representative of the publishing industry requested changes relating to coverage of essential knowledge and skills. The representative requested the deletion of language requiring instructional materials to cover specific essential knowledge and skills a certain number of times in the student text narrative and in end-of-section review exercises, end-of-chapter activities, and/or unit tests as required in the proclamation. The representative provided the rationale that the proposed language would add length to instructional materials and may not be necessary given that language in the proposed amendment to 19 TAC §66.36(a)(1) would address the quality of such coverage.

Response. The SBOE disagreed with deleting the language identified by the representative. The SBOE did, however, take action to clarify requirements for coverage of essential knowledge and skills by changing language in §§66.27(c), 66.36(a)(1), 66.51(a)(10), 66.63(a)(1), and 66.66(c)(1).

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §66.10

The amendment is adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31; §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks; and §31.151, which authorizes the SBOE to impose a reasonable administrative penalty and to provide for a hearing to determine such a penalty.

The adopted amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706115
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.22, 66.27, 66.36, 66.48, 66.51, 66.54, 66.63, 66.66, 66.69, 66.72

The amendments and new section are adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31; §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks; §31.0221, which authorizes the SBOE to adopt rules for the midcycle review and adoption of a textbook for a subject for which textbooks are not currently under review; and §31.026, which authorizes the SBOE to execute contracts for adopted instructional materials.

The adopted amendments and new section implement the Texas Education Code, §7.102(c) and Chapter 31.

§66.27. Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.

(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 24 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of textbooks in a subject area and grade level by the school year in which the textbooks

are intended to be made available in classrooms and not by the school year in which the SBOE makes the request for production.

(b) The proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) a maximum cost to the state for adopted instructional materials in each subject for which bids are being invited;

(3) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;

(4) specifications for providing computerized files to produce braille versions of adopted instructional materials; and

(5) a schedule for the adoption process.

(c) The proclamation shall require instructional materials to cover specific essential knowledge and skills a certain number of times in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.

(d) A draft copy of the proclamation shall be provided to each member of the SBOE and to designated representatives of the publishing industry to solicit input on maximum costs before the SBOE considers the proclamation. In addition, the Texas Education Agency (TEA) shall solicit input from the publishing industry regarding the draft proclamation, including maximum costs, prior to the scheduled adoption by the SBOE. The TEA may use the Internet to facilitate this process. Any revisions recommended as a result of input from publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(e) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.

(f) The SBOE may issue a proclamation for textbooks eligible for midcycle review. The midcycle proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) specifications for providing computerized files to produce braille versions of adopted instructional materials;

(3) a fee not to exceed $10,000 for each textbook submitted for midcycle review; and

(4) a schedule for the midcycle adoption process.

§66.36. State Review Panels: Duties and Conduct.

(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the textbook, as well as in the teacher version of the textbook. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health textbooks. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. The approved procedures include the following.

(A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas Essential Knowledge and Skills (TEKS) coverage within the instructional materials.

(B) State review panel members must participate in a team during the review and reach a consensus to determine if the TEKS have been covered sufficiently in the instructional materials.

(C) Instructional materials shall be evaluated for TEKS coverage at each grade level.

(D) One reference to a TEKS statement is not considered sufficient coverage. At least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(E) If a TEKS statement has multiple student expectations, at least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(F) TEKS statements are not considered covered if only included in side bars, captions, or one question at the end of a chapter.

(2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the conforming list, nonconforming list, or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated by the state review panel; and

(4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State textbook review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings to discuss coverage of Texas Essential Knowledge and Skills, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

§66.51. Instructional Materials Purchased by the State.

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

(2) The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).

(3) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be part of the publisher's official bid and shall be provided for the duration of the original contract and any contract extensions at no cost to the school district or open-enrollment charter school as specified in the publisher's bid.

(4) Under the Texas Education Code, §31.025, the official bid price for an instructional material submission may exceed the maximum cost to the state that is established in the proclamation. The state shall only be responsible for payment to the publisher in an amount equal to the maximum cost. A school district ordering instructional materials is responsible for the portion of the cost that exceeds the state maximum.

(5) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.

(6) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)

(7) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of a textbook contributed to the development of the textbook. The affidavit shall also state in general terms each author's involvement in the development of the textbook.

(8) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. An item not marked as "consumable" is deemed to be "nonconsumable." The cost of such consumables to the state for the entire contract period may exceed the maximum cost established in the proclamation. School districts may be required to pay the difference between the state maximum cost and the actual cost of the materials.

(9) Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.

(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than nine years. The offer must be set forth in the publisher's official bid.

(B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

(10) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. These correlations shall include essential knowledge and skills covered in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(11) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material. The reduced maximum cost for each adopted nonconforming instructional material shall be equal to the original maximum cost for that instructional material times a certain percentage. This percentage shall be the same as the percentage of elements of the essential knowledge and skills covered by the instructional material and that was used by the SBOE to determine whether the instructional material should be designated as conforming, nonconforming, or rejected per the Texas Education Code. Each performance description shall count as an independent element of the essential knowledge and skills of the subject. For those courses where a student expectation is not identified, the knowledge and skill will replace the student expectation to determine the percentage of student expectations addressed. The reduced maximum cost for nonconforming instructional materials will apply to both foundation and enrichment courses. For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(b) Non-adopted instructional materials. A publisher of non-adopted instructional materials selected and purchased by school districts or open-enrollment charter schools under §66.104(c) - (f) of this title (relating to Selection of Instructional Materials by School Districts) shall meet all applicable requirements of the Texas Education Code, §31.151.

§66.63. Report of the Commissioner of Education.

(a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:

(1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be: placed on the conforming list, placed on the nonconforming list, or rejected (To be conforming, instructional materials must cover all essential knowledge and skills as required by the proclamation in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.);

(2) compliance with established manufacturing standards and specifications;

(3) recommended corrections of factual errors identified by state review panels;

(4) prices of instructional materials submitted for adoption; and

(5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).

(b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare preliminary recommendations that instructional materials under consideration be: placed on the conforming list, placed on the nonconforming list, or rejected. According to the schedule for the adoption process, a publisher shall be

given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

(c) The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be: placed on the conforming list, placed on the nonconforming list, or rejected.

(d) The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as braillists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

(a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule for the adoption process.

(b) A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.

(c) By a vote of a majority of the SBOE, the SBOE shall adopt a list of conforming instructional materials and a list of nonconforming instructional materials under the Texas Education Code, §31.023 and §31.024. Instructional materials may be rejected for:

(1) failure to meet essential knowledge and skills specified in the proclamation in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests. In determining the percentage of elements of the essential knowledge and skill covered by instructional materials, each student expectation shall count as an independent element of the essential knowledge and skills of the subject;

(2) failure to meet established manufacturing standards and specifications recognized by the SBOE;

(3) failure to correct errors of fact; or

(4) content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

(d) The SBOE may allow a publisher to withdraw from the adoption process after the date specified in the proclamation due to recommended placement on a conforming or nonconforming list, manufacturing specifications required as a condition of adoption by the SBOE that the publisher states cannot be met, or failure to agree to make corrections required by the SBOE.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706116
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 25, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 475-1497

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SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §66.101

The amendment is adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31; and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The adopted amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.4

The State Board of Education (SBOE) adopts new §74.4, concerning English language proficiency standards (ELPS). The new section is adopted with a non-substantive change to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7187). The new section revises the ELPS that are adopted in 19 TAC Chapter 128, Texas Essential Knowledge and Skills for Spanish Language Arts and English as a Second Language, and adopts the revised ELPS as part of the curriculum requirements in 19 TAC Chapter 74. The rule action to revise the ELPS and adopt in 19 TAC Chapter 74 is necessary to comply with No Child Left Behind (NCLB) Title III requirements.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date will allow for professional development and dissemination of information to occur prior to implementation. The effective date of the adopted new section is 20 days after filing as adopted.

The second language acquisition standards for students in Kindergarten-Grade 12 were adopted as part of 19 TAC Chapter 128, Texas Essential Knowledge and Skills for Spanish Language Arts and English as a Second Language, in 1998. Chapter 128 sets forth essential knowledge and skills and student expectations identical to the essential knowledge and skills and student expectations in Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading, with additional student expectations for English language acquisition. Chapter 128 includes provisions addressing instruction for students whose first language is other than English as well as different proficiency levels within the four language domains: listening, speaking, reading, and writing. While the English as a Second Language (ESL) standards have always applied to the teaching of all content areas, they are currently only located in 19 TAC Chapter 128.

In a 2006 Title III monitoring visit, the U.S. Department of Education indicated that there was insufficient evidence demonstrating that the ESL standards found in 19 TAC Chapter 128 are aligned to state academic content and achievement standards in mathematics, as required by §2113(b)(2) of NCLB. The adoption of the revised ELPS as part of 19 TAC Chapter 74, Curriculum Requirements, would reinforce that these standards are aligned with and apply to all academic content areas.

Texas Education Agency staff and a work group that included SBOE nominees were assembled in 2006 to review and revise the current ESL standards in 19 TAC Chapter 128 as part of the SBOE's ongoing review of the English language arts/reading Texas Essential Knowledge and Skills (TEKS). A draft of the revised ELPS was included on the November 2006 Committee of the Whole agenda for discussion. The work group and staff continued work on the ELPS subsequent to the November 2006 meeting.

In September 2007, the SBOE approved for first reading and filing authorization proposed new 19 TAC §74.4. During its November 16, 2007, meeting, the SBOE approved the new section for second reading and final adoption. The adopted new 19 TAC §74.4, English Language Proficiency Standards, outlines the instruction school districts must provide to English language learners in order for them to have the full opportunity to learn English and to succeed academically. The new rule also clarifies that the ELPS are to be implemented as an integral part of the instruction in each foundation and enrichment subject of the TEKS. English language proficiency levels of beginning, intermediate, advanced, and advanced high in the domains of listening, speaking, reading, and writing are also addressed, as required by NCLB.

The superseded second language acquisition standards in 19 TAC Chapter 128 will be proposed for repeal during the process of revising the TEKS in 19 TAC Chapters 110 and 128.

The adopted new section is filed with a non-substantive correction in subsection (d)(1), as allowed by SBOE operating rules, which authorize the commissioner to approve and file with the Secretary of State non-substantive corrections to SBOE rules. The non-substantive correction to §74.4 is a grammatical, technical edit that moves the placement of a comma. Subsection (d)(1)(A), relating to the beginning proficiency level descriptor for listening, includes in clause (i) the phrase, ". . . the speaker uses linguistic supports such as visuals, slower speech, and other verbal cues and gestures;". To clarify that visuals and slower speech are not examples of verbal cues and gestures, the phrase was corrected by moving the comma in the phrase to read, ". . . the speaker uses linguistic supports such as visuals, slower speech and other verbal cues, and gestures;". A corresponding non-substantive correction was also made in subsection (d)(1)(B)(i), relating to the intermediate proficiency level descriptor for listening.

No comments were received regarding the proposed new section.

The new section is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels.

The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 29.051.

§74.4. English Language Proficiency Standards.

(a) Introduction.

(1) The English language proficiency standards in this section outline English language proficiency level descriptors and student expectations for English language learners (ELLs). School districts shall implement this section as an integral part of each subject in the required curriculum. The English language proficiency standards are to be published along with the Texas Essential Knowledge and Skills (TEKS) for each subject in the required curriculum.

(2) In order for ELLs to be successful, they must acquire both social and academic language proficiency in English. Social language proficiency in English consists of the English needed for daily social interactions. Academic language proficiency consists of the English needed to think critically, understand and learn new concepts, process complex academic material, and interact and communicate in English academic settings.

(3) Classroom instruction that effectively integrates second language acquisition with quality content area instruction ensures that ELLs acquire social and academic language proficiency in English, learn the knowledge and skills in the TEKS, and reach their full academic potential.

(4) Effective instruction in second language acquisition involves giving ELLs opportunities to listen, speak, read, and write at their current levels of English development while gradually increasing the linguistic complexity of the English they read and hear, and are expected to speak and write.

(5) The cross-curricular second language acquisition skills in subsection (c) of this section apply to ELLs in Kindergarten-Grade 12.

(6) The English language proficiency levels of beginning, intermediate, advanced, and advanced high are not grade-specific. ELLs may exhibit different proficiency levels within the language domains of listening, speaking, reading, and writing. The proficiency level descriptors outlined in subsection (d) of this section show the progression of second language acquisition from one proficiency level to the next and serve as a road map to help content area teachers instruct ELLs commensurate with students' linguistic needs.

(b) School district responsibilities. In fulfilling the requirements of this section, school districts shall:

(1) identify the student's English language proficiency levels in the domains of listening, speaking, reading, and writing in accordance with the proficiency level descriptors for the beginning, interme-

diate, advanced, and advanced high levels delineated in subsection (d) of this section;

(2) provide instruction in the knowledge and skills of the foundation and enrichment curriculum in a manner that is linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's levels of English language proficiency to ensure that the student learns the knowledge and skills in the required curriculum;

(3) provide content-based instruction including the cross-curricular second language acquisition essential knowledge and skills in subsection (c) of this section in a manner that is linguistically accommodated to help the student acquire English language proficiency; and

(4) provide intensive and ongoing foundational second language acquisition instruction to ELLs in Grade 3 or higher who are at the beginning or intermediate level of English language proficiency in listening, speaking, reading, and/or writing as determined by the state's English language proficiency assessment system. These ELLs require focused, targeted, and systematic second language acquisition instruction to provide them with the foundation of English language vocabulary, grammar, syntax, and English mechanics necessary to support content-based instruction and accelerated learning of English.

(c) Cross-curricular second language acquisition essential knowledge and skills.

(1) Cross-curricular second language acquisition/learning strategies. The ELL uses language learning strategies to develop an awareness of his or her own learning processes in all content areas. In order for the ELL to meet grade-level learning expectations across the foundation and enrichment curriculum, all instruction delivered in English must be linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's level of English language proficiency. The student is expected to:

(A) use prior knowledge and experiences to understand meanings in English;

(B) monitor oral and written language production and employ self-corrective techniques or other resources;

(C) use strategic learning techniques such as concept mapping, drawing, memorizing, comparing, contrasting, and reviewing to acquire basic and grade-level vocabulary;

(D) speak using learning strategies such as requesting assistance, employing non-verbal cues, and using synonyms and circumlocution (conveying ideas by defining or describing when exact English words are not known);

(E) internalize new basic and academic language by using and reusing it in meaningful ways in speaking and writing activities that build concept and language attainment;

(F) use accessible language and learn new and essential language in the process;

(G) demonstrate an increasing ability to distinguish between formal and informal English and an increasing knowledge of when to use each one commensurate with grade-level learning expectations; and

(H) develop and expand repertoire of learning strategies such as reasoning inductively or deductively, looking for patterns in language, and analyzing sayings and expressions commensurate with grade-level learning expectations.

(2) Cross-curricular second language acquisition/listening. The ELL listens to a variety of speakers including teachers, peers, and electronic media to gain an increasing level of comprehension of newly acquired language in all content areas. ELLs may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in listening. In order for the ELL to meet grade-level learning expectations across the foundation and enrichment curriculum, all instruction delivered in English must be linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's level of English language proficiency. The student is expected to:

(A) distinguish sounds and intonation patterns of English with increasing ease;

(B) recognize elements of the English sound system in newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters;

(C) learn new language structures, expressions, and basic and academic vocabulary heard during classroom instruction and interactions;

(D) monitor understanding of spoken language during classroom instruction and interactions and seek clarification as needed;

(E) use visual, contextual, and linguistic support to enhance and confirm understanding of increasingly complex and elaborated spoken language;

(F) listen to and derive meaning from a variety of media such as audio tape, video, DVD, and CD ROM to build and reinforce concept and language attainment;

(G) understand the general meaning, main points, and important details of spoken language ranging from situations in which topics, language, and contexts are familiar to unfamiliar;

(H) understand implicit ideas and information in increasingly complex spoken language commensurate with grade-level learning expectations; and

(I) demonstrate listening comprehension of increasingly complex spoken English by following directions, retelling or summarizing spoken messages, responding to questions and requests, collaborating with peers, and taking notes commensurate with content and grade-level needs.

(3) Cross-curricular second language acquisition/speaking. The ELL speaks in a variety of modes for a variety of purposes with an awareness of different language registers (formal/informal) using vocabulary with increasing fluency and accuracy in language arts and all content areas. ELLs may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in speaking. In order for the ELL to meet grade-level learning expectations across the foundation and enrichment curriculum, all instruction delivered in English must be linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's level of English language proficiency. The student is expected to:

(A) practice producing sounds of newly acquired vocabulary such as long and short vowels, silent letters, and consonant clusters to pronounce English words in a manner that is increasingly comprehensible;

(B) expand and internalize initial English vocabulary by learning and using high-frequency English words necessary for identifying and describing people, places, and objects, by retelling simple stories and basic information represented or supported by

pictures, and by learning and using routine language needed for classroom communication;

(C) speak using a variety of grammatical structures, sentence lengths, sentence types, and connecting words with increasing accuracy and ease as more English is acquired;

(D) speak using grade-level content area vocabulary in context to internalize new English words and build academic language proficiency;

(E) share information in cooperative learning interactions;

(F) ask and give information ranging from using a very limited bank of high-frequency, high-need, concrete vocabulary, including key words and expressions needed for basic communication in academic and social contexts, to using abstract and content-based vocabulary during extended speaking assignments;

(G) express opinions, ideas, and feelings ranging from communicating single words and short phrases to participating in extended discussions on a variety of social and grade-appropriate academic topics;

(H) narrate, describe, and explain with increasing specificity and detail as more English is acquired;

(I) adapt spoken language appropriately for formal and informal purposes; and

(J) respond orally to information presented in a wide variety of print, electronic, audio, and visual media to build and reinforce concept and language attainment.

(4) Cross-curricular second language acquisition/reading. The ELL reads a variety of texts for a variety of purposes with an increasing level of comprehension in all content areas. ELLs may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in reading. In order for the ELL to meet grade-level learning expectations across the foundation and enrichment curriculum, all instruction delivered in English must be linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's level of English language proficiency. For Kindergarten and Grade 1, certain of these student expectations apply to text read aloud for students not yet at the stage of decoding written text. The student is expected to:

(A) learn relationships between sounds and letters of the English language and decode (sound out) words using a combination of skills such as recognizing sound-letter relationships and identifying cognates, affixes, roots, and base words;

(B) recognize directionality of English reading such as left to right and top to bottom;

(C) develop basic sight vocabulary, derive meaning of environmental print, and comprehend English vocabulary and language structures used routinely in written classroom materials;

(D) use prereading supports such as graphic organizers, illustrations, and pretaught topic-related vocabulary and other prereading activities to enhance comprehension of written text;

(E) read linguistically accommodated content area material with a decreasing need for linguistic accommodations as more English is learned;

(F) use visual and contextual support and support from peers and teachers to read grade-appropriate content area text, enhance and confirm understanding, and develop vocabulary, grasp of language structures, and background knowledge needed to comprehend increasingly challenging language;

(G) demonstrate comprehension of increasingly complex English by participating in shared reading, retelling or summarizing material, responding to questions, and taking notes commensurate with content area and grade level needs;

(H) read silently with increasing ease and comprehension for longer periods;

(I) demonstrate English comprehension and expand reading skills by employing basic reading skills such as demonstrating understanding of supporting ideas and details in text and graphic sources, summarizing text, and distinguishing main ideas from details commensurate with content area needs;

(J) demonstrate English comprehension and expand reading skills by employing inferential skills such as predicting, making connections between ideas, drawing inferences and conclusions from text and graphic sources, and finding supporting text evidence commensurate with content area needs; and

(K) demonstrate English comprehension and expand reading skills by employing analytical skills such as evaluating written information and performing critical analyses commensurate with content area and grade-level needs.

(5) Cross-curricular second language acquisition/writing. The ELL writes in a variety of forms with increasing accuracy to effectively address a specific purpose and audience in all content areas. ELLs may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in writing. In order for the ELL to meet grade-level learning expectations across foundation and enrichment curriculum, all instruction delivered in English must be linguistically accommodated (communicated, sequenced, and scaffolded) commensurate with the student's level of English language proficiency. For Kindergarten and Grade 1, certain of these student expectations do not apply until the student has reached the stage of generating original written text using a standard writing system. The student is expected to:

(A) learn relationships between sounds and letters of the English language to represent sounds when writing in English;

(B) write using newly acquired basic vocabulary and content-based grade-level vocabulary;

(C) spell familiar English words with increasing accuracy, and employ English spelling patterns and rules with increasing accuracy as more English is acquired;

(D) edit writing for standard grammar and usage, including subject-verb agreement, pronoun agreement, and appropriate verb tenses commensurate with grade-level expectations as more English is acquired;

(E) employ increasingly complex grammatical structures in content area writing commensurate with grade-level expectations, such as:

(i) using correct verbs, tenses, and pronouns/antecedents;

(ii) using possessive case (apostrophe *s*) correctly; and

(iii) using negatives and contractions correctly;

(F) write using a variety of grade-appropriate sentence lengths, patterns, and connecting words to combine phrases, clauses,

and sentences in increasingly accurate ways as more English is acquired; and

(G) narrate, describe, and explain with increasing specificity and detail to fulfill content area writing needs as more English is acquired.

(d) Proficiency level descriptors.

(1) Listening, Kindergarten-Grade 12. ELLs may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in listening. The following proficiency level descriptors for listening are sufficient to describe the overall English language proficiency levels of ELLs in this language domain in order to linguistically accommodate their instruction.

(A) Beginning. Beginning ELLs have little or no ability to understand spoken English in academic and social settings. These students:

(i) struggle to understand simple conversations and simple discussions even when the topics are familiar and the speaker uses linguistic supports such as visuals, slower speech and other verbal cues, and gestures;

(ii) struggle to identify and distinguish individual words and phrases during social and instructional interactions that have not been intentionally modified for ELLs; and

(iii) may not seek clarification in English when failing to comprehend the English they hear; frequently remain silent, watching others for cues.

(B) Intermediate. Intermediate ELLs have the ability to understand simple, high-frequency spoken English used in routine academic and social settings. These students:

(i) usually understand simple or routine directions, as well as short, simple conversations and short, simple discussions on familiar topics; when topics are unfamiliar, require extensive linguistic supports and adaptations such as visuals, slower speech and other verbal cues, simplified language, gestures, and preteaching to preview or build topic-related vocabulary;

(ii) often identify and distinguish key words and phrases necessary to understand the general meaning during social and basic instructional interactions that have not been intentionally modified for ELLs; and

(iii) have the ability to seek clarification in English when failing to comprehend the English they hear by requiring/requesting the speaker to repeat, slow down, or rephrase speech.

(C) Advanced. Advanced ELLs have the ability to understand, with second language acquisition support, grade-appropriate spoken English used in academic and social settings. These students:

(i) usually understand longer, more elaborated directions, conversations, and discussions on familiar and some unfamiliar topics, but sometimes need processing time and sometimes depend on visuals, verbal cues, and gestures to support understanding;

(ii) understand most main points, most important details, and some implicit information during social and basic instructional interactions that have not been intentionally modified for ELLs; and

(iii) occasionally require/request the speaker to repeat, slow down, or rephrase to clarify the meaning of the English they hear.

(D) Advanced high. Advanced high ELLs have the ability to understand, with minimal second language acquisition support, grade-appropriate spoken English used in academic and social settings. These students:

(i) understand longer, elaborated directions, conversations, and discussions on familiar and unfamiliar topics with occasional need for processing time and with little dependence on visuals, verbal cues, and gestures; some exceptions when complex academic or highly specialized language is used;

(ii) understand main points, important details, and implicit information at a level nearly comparable to native English-speaking peers during social and instructional interactions; and

(iii) rarely require/request the speaker to repeat, slow down, or rephrase to clarify the meaning of the English they hear.

(2) Speaking, Kindergarten-Grade 12. ELLs may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in speaking. The following proficiency level descriptors for speaking are sufficient to describe the overall English language proficiency levels of ELLs in this language domain in order to linguistically accommodate their instruction.

(A) Beginning. Beginning ELLs have little or no ability to speak English in academic and social settings. These students:

(i) mainly speak using single words and short phrases consisting of recently practiced, memorized, or highly familiar material to get immediate needs met; may be hesitant to speak and often give up in their attempts to communicate;

(ii) speak using a very limited bank of high-frequency, high-need, concrete vocabulary, including key words and expressions needed for basic communication in academic and social contexts;

(iii) lack the knowledge of English grammar necessary to connect ideas and speak in sentences; can sometimes produce sentences using recently practiced, memorized, or highly familiar material;

(iv) exhibit second language acquisition errors that may hinder overall communication, particularly when trying to convey information beyond memorized, practiced, or highly familiar material; and

(v) typically use pronunciation that significantly inhibits communication.

(B) Intermediate. Intermediate ELLs have the ability to speak in a simple manner using English commonly heard in routine academic and social settings. These students:

(i) are able to express simple, original messages, speak using sentences, and participate in short conversations and classroom interactions; may hesitate frequently and for long periods to think about how to communicate desired meaning;

(ii) speak simply using basic vocabulary needed in everyday social interactions and routine academic contexts; rarely have vocabulary to speak in detail;

(iii) exhibit an emerging awareness of English grammar and speak using mostly simple sentence structures and simple tenses; are most comfortable speaking in present tense;

(iv) exhibit second language acquisition errors that may hinder overall communication when trying to use complex or less familiar English; and

(v) use pronunciation that can usually be understood by people accustomed to interacting with ELLs.

(C) Advanced. Advanced ELLs have the ability to speak using grade-appropriate English, with second language acquisition support, in academic and social settings. These students:

(i) are able to participate comfortably in most conversations and academic discussions on familiar topics, with some pauses to restate, repeat, or search for words and phrases to clarify meaning;

(ii) discuss familiar academic topics using content-based terms and common abstract vocabulary; can usually speak in some detail on familiar topics;

(iii) have a grasp of basic grammar features, including a basic ability to narrate and describe in present, past, and future tenses; have an emerging ability to use complex sentences and complex grammar features;

(iv) make errors that interfere somewhat with communication when using complex grammar structures, long sentences, and less familiar words and expressions; and

(v) may mispronounce words, but use pronunciation that can usually be understood by people not accustomed to interacting with ELLs.

(D) Advanced high. Advanced high ELLs have the ability to speak using grade-appropriate English, with minimal second language acquisition support, in academic and social settings. These students:

(i) are able to participate in extended discussions on a variety of social and grade-appropriate academic topics with only occasional disruptions, hesitations, or pauses;

(ii) communicate effectively using abstract and content-based vocabulary during classroom instructional tasks, with some exceptions when low-frequency or academically demanding vocabulary is needed; use many of the same idioms and colloquialisms as their native English-speaking peers;

(iii) can use English grammar structures and complex sentences to narrate and describe at a level nearly comparable to native English-speaking peers;

(iv) make few second language acquisition errors that interfere with overall communication; and

(v) may mispronounce words, but rarely use pronunciation that interferes with overall communication.

(3) Reading, Kindergarten-Grade 1. ELLs in Kindergarten and Grade 1 may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in reading. The following proficiency level descriptors for reading are sufficient to describe the overall English language proficiency levels of ELLs in this language domain in order to linguistically accommodate their instruction and should take into account developmental stages of emergent readers.

(A) Beginning. Beginning ELLs have little or no ability to use the English language to build foundational reading skills. These students:

(i) derive little or no meaning from grade-appropriate stories read aloud in English, unless the stories are:

(I) read in short "chunks;"

(II) controlled to include the little English they know such as language that is high frequency, concrete, and recently practiced; and

(III) accompanied by ample visual supports such as illustrations, gestures, pantomime, and objects and by linguistic supports such as careful enunciation and slower speech;

(ii) begin to recognize and understand environmental print in English such as signs, labeled items, names of peers, and logos; and

(iii) have difficulty decoding most grade-appropriate English text because they:

(I) understand the meaning of very few words in English; and

(II) struggle significantly with sounds in spoken English words and with sound-symbol relationships due to differences between their primary language and English.

(B) Intermediate. Intermediate ELLs have a limited ability to use the English language to build foundational reading skills. These students:

(i) demonstrate limited comprehension (key words and general meaning) of grade-appropriate stories read aloud in English, unless the stories include:

(I) predictable story lines;

(II) highly familiar topics;

(III) primarily high-frequency, concrete vocabulary;

(IV) short, simple sentences; and

(V) visual and linguistic supports;

(ii) regularly recognize and understand common environmental print in English such as signs, labeled items, names of peers, logos; and

(iii) have difficulty decoding grade-appropriate English text because they:

(I) understand the meaning of only those English words they hear frequently; and

(II) struggle with some sounds in English words and some sound-symbol relationships due to differences between their primary language and English.

(C) Advanced. Advanced ELLs have the ability to use the English language, with second language acquisition support, to build foundational reading skills. These students:

(i) demonstrate comprehension of most main points and most supporting ideas in grade-appropriate stories read aloud in English, although they may still depend on visual and linguistic supports to gain or confirm meaning;

(ii) recognize some basic English vocabulary and high-frequency words in isolated print; and

(iii) with second language acquisition support, are able to decode most grade-appropriate English text because they:

(I) understand the meaning of most grade-appropriate English words; and

(II) have little difficulty with English sounds and sound-symbol relationships that result from differences between their primary language and English.

(D) Advanced high. Advanced high ELLs have the ability to use the English language, with minimal second language acquisition support, to build foundational reading skills. These students:

(i) demonstrate, with minimal second language acquisition support and at a level nearly comparable to native English-speaking peers, comprehension of main points and supporting ideas (explicit and implicit) in grade-appropriate stories read aloud in English;

(ii) with some exceptions, recognize sight vocabulary and high-frequency words to a degree nearly comparable to that of native English-speaking peers; and

(iii) with minimal second language acquisition support, have an ability to decode and understand grade-appropriate English text at a level nearly comparable to native English-speaking peers.

(4) Reading, Grades 2-12. ELLs in Grades 2-12 may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in reading. The following proficiency level descriptors for reading are sufficient to describe the overall English language proficiency levels of ELLs in this language domain in order to linguistically accommodate their instruction.

(A) Beginning. Beginning ELLs have little or no ability to read and understand English used in academic and social contexts. These students:

(i) read and understand the very limited recently practiced, memorized, or highly familiar English they have learned; vocabulary predominantly includes:

(I) environmental print;

(II) some very high-frequency words; and

(III) concrete words that can be represented by pictures;

(ii) read slowly, word by word;

(iii) have a very limited sense of English language structures;

(iv) comprehend predominantly isolated familiar words and phrases; comprehend some sentences in highly routine contexts or recently practiced, highly familiar text;

(v) are highly dependent on visuals and prior knowledge to derive meaning from text in English; and

(vi) are able to apply reading comprehension skills in English only when reading texts written for this level.

(B) Intermediate. Intermediate ELLs have the ability to read and understand simple, high-frequency English used in routine academic and social contexts. These students:

(i) read and understand English vocabulary on a somewhat wider range of topics and with increased depth; vocabulary predominantly includes:

(I) everyday oral language;

(II) literal meanings of common words;

(III) routine academic language and terms; and

(IV) commonly used abstract language such as terms used to describe basic feelings;

(ii) often read slowly and in short phrases; may reread to clarify meaning;

(iii) have a growing understanding of basic, routinely used English language structures;

(iv) understand simple sentences in short, connected texts, but are dependent on visual cues, topic familiarity, prior knowledge, pretaught topic-related vocabulary, story predictability, and teacher/peer assistance to sustain comprehension;

(v) struggle to independently read and understand grade-level texts; and

(vi) are able to apply basic and some higher-order comprehension skills when reading texts that are linguistically accommodated and/or simplified for this level.

(C) Advanced. Advanced ELLs have the ability to read and understand, with second language acquisition support, grade-appropriate English used in academic and social contexts. These students:

(i) read and understand, with second language acquisition support, a variety of grade-appropriate English vocabulary used in social and academic contexts:

(I) with second language acquisition support, read and understand grade-appropriate concrete and abstract vocabulary, but have difficulty with less commonly encountered words;

(II) demonstrate an emerging ability to understand words and phrases beyond their literal meaning; and

(III) understand multiple meanings of commonly used words;

(ii) read longer phrases and simple sentences from familiar text with appropriate rate and speed;

(iii) are developing skill in using their growing familiarity with English language structures to construct meaning of grade-appropriate text; and

(iv) are able to apply basic and higher-order comprehension skills when reading grade-appropriate text, but are still occasionally dependent on visuals, teacher/peer assistance, and other linguistically accommodated text features to determine or clarify meaning, particularly with unfamiliar topics.

(D) Advanced high. Advanced high ELLs have the ability to read and understand, with minimal second language acquisition support, grade-appropriate English used in academic and social contexts. These students:

(i) read and understand vocabulary at a level nearly comparable to that of their native English-speaking peers, with some exceptions when low-frequency or specialized vocabulary is used;

(ii) generally read grade-appropriate, familiar text with appropriate rate, speed, intonation, and expression;

(iii) are able to, at a level nearly comparable to native English-speaking peers, use their familiarity with English language structures to construct meaning of grade-appropriate text; and

(iv) are able to apply, with minimal second language acquisition support and at a level nearly comparable to native English-speaking peers, basic and higher-order comprehension skills when reading grade-appropriate text.

(5) Writing, Kindergarten-Grade 1. ELLs in Kindergarten and Grade 1 may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in writing. The fol-

lowing proficiency level descriptors for writing are sufficient to describe the overall English language proficiency levels of ELLs in this language domain in order to linguistically accommodate their instruction and should take into account developmental stages of emergent writers.

(A) Beginning. Beginning ELLs have little or no ability to use the English language to build foundational writing skills. These students:

(i) are unable to use English to explain self-generated writing such as stories they have created or other personal expressions, including emergent forms of writing (pictures, letter-like forms, mock words, scribbling, etc.);

(ii) know too little English to participate meaningfully in grade-appropriate shared writing activities using the English language;

(iii) cannot express themselves meaningfully in self-generated, connected written text in English beyond the level of high-frequency, concrete words, phrases, or short sentences that have been recently practiced and/or memorized; and

(iv) may demonstrate little or no awareness of English print conventions.

(B) Intermediate. Intermediate ELLs have a limited ability to use the English language to build foundational writing skills. These students:

(i) know enough English to explain briefly and simply self-generated writing, including emergent forms of writing, as long as the topic is highly familiar and concrete and requires very high-frequency English;

(ii) can participate meaningfully in grade-appropriate shared writing activities using the English language only when the writing topic is highly familiar and concrete and requires very high-frequency English;

(iii) express themselves meaningfully in self-generated, connected written text in English when their writing is limited to short sentences featuring simple, concrete English used frequently in class; and

(iv) frequently exhibit features of their primary language when writing in English such as primary language words, spelling patterns, word order, and literal translating.

(C) Advanced. Advanced ELLs have the ability to use the English language to build, with second language acquisition support, foundational writing skills. These students:

(i) use predominantly grade-appropriate English to explain, in some detail, most self-generated writing, including emergent forms of writing;

(ii) can participate meaningfully, with second language acquisition support, in most grade-appropriate shared writing activities using the English language;

(iii) although second language acquisition support is needed, have an emerging ability to express themselves in self-generated, connected written text in English in a grade-appropriate manner; and

(iv) occasionally exhibit second language acquisition errors when writing in English.

(D) Advanced high. Advanced high ELLs have the ability to use the English language to build, with minimal second language acquisition support, foundational writing skills. These students:

(i) use English at a level of complexity and detail nearly comparable to that of native English-speaking peers when explaining self-generated writing, including emergent forms of writing;

(ii) can participate meaningfully in most grade-appropriate shared writing activities using the English language; and

(iii) although minimal second language acquisition support may be needed, express themselves in self-generated, connected written text in English in a manner nearly comparable to their native English-speaking peers.

(6) Writing, Grades 2-12. ELLs in Grades 2-12 may be at the beginning, intermediate, advanced, or advanced high stage of English language acquisition in writing. The following proficiency level descriptors for writing are sufficient to describe the overall English language proficiency levels of ELLs in this language domain in order to linguistically accommodate their instruction.

(A) Beginning. Beginning ELLs lack the English vocabulary and grasp of English language structures necessary to address grade-appropriate writing tasks meaningfully. These students:

(i) have little or no ability to use the English language to express ideas in writing and engage meaningfully in grade-appropriate writing assignments in content area instruction;

(ii) lack the English necessary to develop or demonstrate elements of grade-appropriate writing such as focus and coherence, conventions, organization, voice, and development of ideas in English; and

(iii) exhibit writing features typical at this level, including:

(I) ability to label, list, and copy;

(II) high-frequency words/phrases and short, simple sentences (or even short paragraphs) based primarily on recently practiced, memorized, or highly familiar material; this type of writing may be quite accurate;

(III) present tense used primarily; and

(IV) frequent primary language features (spelling patterns, word order, literal translations, and words from the student's primary language) and other errors associated with second language acquisition may significantly hinder or prevent understanding, even for individuals accustomed to the writing of ELLs.

(B) Intermediate. Intermediate ELLs have enough English vocabulary and enough grasp of English language structures to address grade-appropriate writing tasks in a limited way. These students:

(i) have a limited ability to use the English language to express ideas in writing and engage meaningfully in grade-appropriate writing assignments in content area instruction;

(ii) are limited in their ability to develop or demonstrate elements of grade-appropriate writing in English; communicate best when topics are highly familiar and concrete, and require simple, high-frequency English; and

(iii) exhibit writing features typical at this level, including:

(I) simple, original messages consisting of short, simple sentences; frequent inaccuracies occur when creating or taking risks beyond familiar English;

(II) high-frequency vocabulary; academic writing often has an oral tone;

(III) loosely connected text with limited use of cohesive devices or repetitive use, which may cause gaps in meaning;

(IV) repetition of ideas due to lack of vocabulary and language structures;

(V) present tense used most accurately; simple future and past tenses, if attempted, are used inconsistently or with frequent inaccuracies;

(VI) undetailed descriptions, explanations, and narrations; difficulty expressing abstract ideas;

(VII) primary language features and errors associated with second language acquisition may be frequent; and

(VIII) some writing may be understood only by individuals accustomed to the writing of ELLs; parts of the writing may be hard to understand even for individuals accustomed to ELL writing.

(C) Advanced. Advanced ELLs have enough English vocabulary and command of English language structures to address grade-appropriate writing tasks, although second language acquisition support is needed. These students:

(i) are able to use the English language, with second language acquisition support, to express ideas in writing and engage meaningfully in grade-appropriate writing assignments in content area instruction;

(ii) know enough English to be able to develop or demonstrate elements of grade-appropriate writing in English, although second language acquisition support is particularly needed when topics are abstract, academically challenging, or unfamiliar; and

(iii) exhibit writing features typical at this level, including:

(I) grasp of basic verbs, tenses, grammar features, and sentence patterns; partial grasp of more complex verbs, tenses, grammar features, and sentence patterns;

(II) emerging grade-appropriate vocabulary; academic writing has a more academic tone;

(III) use of a variety of common cohesive devices, although some redundancy may occur;

(IV) narrations, explanations, and descriptions developed in some detail with emerging clarity; quality or quantity declines when abstract ideas are expressed, academic demands are high, or low-frequency vocabulary is required;

(V) occasional second language acquisition errors; and

(VI) communications are usually understood by individuals not accustomed to the writing of ELLs.

(D) Advanced high. Advanced high ELLs have acquired the English vocabulary and command of English language structures necessary to address grade-appropriate writing tasks with minimal second language acquisition support. These students:

(i) are able to use the English language, with minimal second language acquisition support, to express ideas in writing and engage meaningfully in grade-appropriate writing assignments in content area instruction;

(ii) know enough English to be able to develop or demonstrate, with minimal second language acquisition support, elements of grade-appropriate writing in English; and

(iii) exhibit writing features typical at this level, including:

(I) nearly comparable to writing of native English-speaking peers in clarity and precision with regard to English vocabulary and language structures, with occasional exceptions when writing about academically complex ideas, abstract ideas, or topics requiring low-frequency vocabulary;

(II) occasional difficulty with naturalness of phrasing and expression; and

(III) errors associated with second language acquisition are minor and usually limited to low-frequency words and structures; errors rarely interfere with communication.

(e) Effective date. The provisions of this section supersede the ESL standards specified in Chapter 128 of this title (relating to Texas Essential Knowledge and Skills for Spanish Language Arts and English as a Second Language) upon the effective date of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.22, §74.27

The State Board of Education (SBOE) adopts amendments to §74.22 and §74.27, concerning curriculum requirements. The amendments are adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7195) and will not be republished. Section 74.22 addresses a district's use of alternative procedures for delivering instruction. Section 74.27 addresses innovative courses designed to enable students to master knowledge, skills, and competencies not included in the essential knowledge and skills of the required curriculum. This section includes reference to a district's operation of a magnet program, academy, or other innovative program. The adopted amendments clarify the provision for a district to operate special programs to serve student populations with specialized interests and aptitudes and update the approval process for innovative courses.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date will allow the adopted amendments to the rules to be implemented in a timely manner. This will allow school districts to benefit from a more streamlined process in the current

academic year. The effective date of the adopted amendments is 20 days after filing as adopted.

The adopted amendment to 19 TAC §74.22, Options for Offering Courses, clarifies that magnet programs, academies, and other innovative programs are allowable options for offering courses.

The adopted amendment to 19 TAC §74.27, Innovative Courses and Programs, updates and clarifies the process by which districts and organizations apply for innovative course status by allowing school districts, including open-enrollment charter schools, to offer state-approved innovative courses without having to submit individual district applications. The rule currently limits the number of years for which an innovative course may be approved. The adopted amendment also removes this limit. The amendment also removes the reference to operation of a magnet program, academy, or other innovative program since this provision is addressed in the adopted amendment to 19 TAC §74.22. Other repetitive language was also deleted.

The adopted amendment to 19 TAC §74.27 will allow districts to offer state-approved innovative courses without submitting individual district applications, thus reducing school district reporting requirements.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §28.002(f), which allows the SBOE to approve a locally-offered course for credit for high school graduation.

The adopted amendments implement the Texas Education Code, §28.002(f).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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19 TAC §74.32

The State Board of Education (SBOE) adopts the repeal of §74.32, concerning physical activity requirements. The repeal is adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7196) and will not be republished. The section addresses physical activity programs for students in Kindergarten - Grade 8. The adopted repeal removes the physical activity requirements from SBOE rule in accordance with Senate Bill (SB) 530, 80th Texas Legislature, 2007, which removes SBOE rulemaking authority for the rule.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date will facilitate the immediate repeal of a rule for which authority no longer exists. The effective date of the adopted repeal is 20 days after filing as adopted.

During the regular 2005 legislative session, the 79th Texas Legislature passed SB 42, which allowed the SBOE to amend its rule to include a physical activity requirement for students in Grades 6 - 8. The amendment to 19 TAC §74.32 adopted by the SBOE in July 2006 addressed this legislation. The adopted amendment added language requiring a local school board to establish a policy that determines the extent to which students enrolled in middle and junior high school settings are allowed to meet physical activity requirements.

SB 530, enacted by the 80th Texas Legislature, 2007, now mandates that school districts require students to engage in physical activity but removes SBOE rulemaking authority over the matter. The adopted repeal adheres to this legislation.

No comments were received regarding the proposed repeal.

The repeal is adopted under the Texas Education Code, §28.002(l), which requires school districts to establish physical activity requirements for students. Section 74.32 was initially adopted under the Texas Education Code, §28.002(l); however, SB 530, 80th Texas Legislature, 2007, amended this statute, removing SBOE authority for this rule.

The adopted repeal implements the Texas Education Code, §28.002(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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SUBCHAPTER F. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2007 - 2008

19 TAC §74.61

The State Board of Education (SBOE) adopts an amendment to §74.61, concerning graduation requirements. The amendment is adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7197) and will not be republished. The section establishes high school graduation requirements, beginning with school year 2007-2008. The adopted amendment establishes in rule a grandfather clause for students who took Integrated Physics and Chemistry (IPC) in Grade 8 during the 2006-2007 school year, prior to the adoption of amendments to 19 TAC Chapter 74, Subchapter F, and who wish to graduate under the Distinguished Achievement Program.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date will allow students who should have received credit toward graduation for courses taken in the 2006-2007 school year to have their academic achievement records reflect those credits in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

Amendments to 19 TAC Chapter 74, Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008, adopted by the SBOE in November 2006, included changes to reflect the four years of mathematics and science graduation requirements of House Bill 1, 79th Texas Legislature, Third Called Session, 2006. These changes applied to the recommended high school and distinguished achievement programs found in 19 TAC §74.63 and 19 TAC §74.64. The adopted amendments to 19 TAC Chapter 74, Subchapter F, do not allow IPC to count as one of the four courses for science credit under the Distinguished Achievement Program beginning with students who enter Grade 9 in school year 2007-2008.

The adopted amendment to 19 TAC §74.61 allows IPC to count as one of the four years of science for students who took IPC in 2006-2007 prior to entering Grade 9 in 2007-2008.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002 and to by rule require that curriculum requirements for the recommended and advanced high school programs include a requirement that students successfully complete four courses in each subject of the foundation curriculum.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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CHAPTER 95. COMMISSIONER'S RULES CONCERNING EDUCATION RESEARCH CENTERS

19 TAC §95.1001

The Texas Education Agency (TEA) adopts new §95.1001, concerning education research centers. The new section is adopted without changes to the proposed text as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7365) and will not be republished. The adopted new section implements the requirements of the Texas Education Code (TEC), §1.005, Education Research Centers; Sharing Student Information, added by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006, that requires the commissioner of education and the Texas Higher Education Coordinating Board (THECB) to adopt rules for the use of student data at an education research center.

HB 1, Section 2.01, 79th Texas Legislature, Third Called Session, 2006, added the TEC, §1.005, providing for the creation of education research centers and for the sharing of student information. This legislation directs the commissioner of education and the THECB to adopt rules that provide for implementation of the new requirements. The TEC, §1.005, also requires the adoption of rules to protect the confidentiality of student information, including the establishment of procedures to ensure that confidential student information is not duplicated or removed from a center in an unauthorized manner.

Adopted new 19 TAC Chapter 95, Commissioner's Rules Concerning Education Research Centers, §95.1001, Operation of Education Research Centers, corresponds with the rule adopted by the THECB, with only formatting and reference changes for consistency with TEA rule format and style requirements. The adopted new 19 TAC §95.1001 implements the legislative requirements, as follows.

Subsection (a) defines words and terms used in the section.

Subsection (b) describes how an education research center may be established, who is eligible to serve as an education research center, and the responsibilities of an education research center.

Subsection (c) explains the composition of the education research center Joint Advisory Board, terms of its members, and minimum number of meetings annually.

Subsection (d) provides required authorizations for an education research center; required education research center leadership; and approvals needed from the THECB, TEA, and education research center Joint Advisory Board for access to confidential student data.

Subsection (e) outlines the conditions and notices leading to sanctions or termination of an education research center by the Joint Advisory Board, THECB, and TEA.

Subsection (f) describes the security measures necessary for an education research center to maintain to avoid the unauthorized disclosure of confidential information.

The public comment period on the proposal began October 19, 2007, and ended November 18, 2007. No comments were received regarding the proposed new section.

The new section is adopted under the Texas Education Code, §1.005, which authorizes the commissioner of education and the Texas Higher Education Coordinating Board to adopt rules as necessary to implement education research centers and sharing

student information, including rules for the use of student data at an education research center.

The new section implements the Texas Education Code, §1.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER A. ACCOUNTABILITY

19 TAC §97.1, §97.2

The State Board of Education (SBOE) adopts amendments to §97.1 and §97.2, concerning accountability. The amendments are adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7198) and will not be republished. The amended sections address accountability ratings assigned to districts and types of performance ratings based on measures established by the commissioner of education. The adopted amendments bring the rules into closer alignment with state and federal statute.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date will allow the amendments to the rules to be implemented in a timely manner. The effective date of the adopted amendments is 20 days after filing as adopted.

The Texas Education Code (TEC), §39.072(a), authorizes the SBOE to adopt rules to evaluate the performance of school districts and to assign to each district a performance rating. TEC, §39.073(a), authorizes the commissioner of education to determine how all indicators adopted under the TEC, §39.051(b), may be used to determine accountability ratings and to select districts and campuses for acknowledgment. TEC, §39.072(c), authorizes the agency to evaluate against state standards and to report the performance of each campus in a district and each open-enrollment charter school based on the performance of the campus on the indicators adopted under the TEC, §39.051(b)(1) - (8). TEC, §39.051(d), authorizes the commissioner of education to define exemplary, recognized, and unacceptable performance for each academic excellence indicator included under TEC, §39.051(b)(1) - (8).

Currently, §97.1, Accountability, provides the primary basis considered for assigning an accountability rating to a district. The adopted amendment to 19 TAC §97.1 deletes subsection (d), since accreditation status will be defined as required in House Bill 1, 79th Texas Legislature, Third Called Session, 2006.

Section 97.2, Accountability Ratings, establishes the types of performance ratings for districts and states that the specific procedures for determining district and campus accountability ratings based on performance measures will be established by the commissioner of education. The adopted amendment to 19 TAC §97.2 incorporates minor edits necessary to bring the rule into alignment with current state statute, including labels used for the rating categories and the definitions relative to those labels. A revision in subsection (c) clarifies the manner in which the procedures for determining ratings are adopted in commissioner rule.

No comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Education Code, §7.102(c)(29), which authorizes the SBOE to perform duties in connection with the public school accountability system as prescribed by the TEC, Chapter 39 and §39.072(a), which authorizes the SBOE to adopt rules to evaluate the performance of school districts and to assign to each district a performance rating.

The adopted amendments implement the Texas Education Code, §7.102(c)(29) and §39.072(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 153. SCHOOL DISTRICT PERSONNEL
SUBCHAPTER DD. CRIMINAL HISTORY RECORD INFORMATION REVIEW

19 TAC §§153.1101, 153.1103, 153.1105, 153.1107, 153.1109, 153.1111, 153.1113, 153.1115

The Texas Education Agency (TEA) adopts new §§153.1101, 153.1103, 153.1105, 153.1107, 153.1109, 153.1111, 153.1113, and 153.1115, concerning criminal history record information review. The new sections are adopted without changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7637) and will not be republished. The adopted new sections implement the requirements of the Texas Education Code (TEC), §§22.0832, 22.0833, 22.0836, 22.0837, and 22.085, which provide for national criminal history record information reviews of certain open-enrollment charter school employees, noncertified employees, and substitute teachers and authorize the commissioner of education to adopt rules for these reviews.

The TEC, §§22.0832, 22.0833, and 22.0836, added by SB 9, 80th Texas Legislature, 2007, require that the TEA conduct

national criminal history record information reviews of certain open-enrollment charter school employees, noncertified employees hired after January 1, 2008, and substitute teachers. The adopted new rules in 19 TAC Chapter 153, School Districts, Subchapter DD, Criminal History Record Information Review, implement these requirements as follows.

In order to obtain the national criminal history record information, the adopted new rules require certain open-enrollment charter school employees, noncertified employees hired after January 1, 2008, and substitute teachers to submit fingerprint and other identification information to the Department of Public Safety (DPS) in the form the DPS requires so that these persons' criminal history record information can be entered in the DPS Criminal History Clearinghouse.

The adopted new rules require school districts, open-enrollment charter schools, and shared services arrangements to identify these persons and to assist in the collection of their fingerprint and identifying information in a way that ensures that their criminal history record information is submitted to the TEA and entered into the Clearinghouse. The adopted new rules also authorize fees for such reviews, set standards regarding the criminal convictions, and establish a process for notifying persons that their criminal history record information disqualifies them from school employment under the standards of the TEC, §§22.0832, 22.0833, 22.0836, and 22.085.

The adopted new rules also define applicable words and terms; establish the purpose of the subchapter; address required assistance by school entities, private schools, and regional education service centers; and provide for an appeal of a TEA determination that would meet the standards of due process.

School districts are required to report to the TEA the names of all noncertified employees after January 1, 2008, and ensure that those employees have submitted the information necessary for a national criminal history record review prior to beginning employment. School districts and charter schools must submit the names of their substitute teachers and charter school employees to whom the TEC, §12.1059, applies; assist the TEA in notifying their employees of their obligations under these rules; and discharge any such employees upon notice from the TEA that they have not submitted their national criminal history record information within 80 calendar days of notice from the TEA to do so. Each school year the superintendent or chief operating officer of a school entity is required to certify to the TEA that the school entity has complied with discharging or refusing to hire an employee or applicant for employment if certain information is obtained through a criminal history record information review, as specified in the TEC, §22.085.

School districts and charter schools would only be required to maintain locally such documents as are necessary to establish their compliance with the adopted new rules.

The public comment period on the proposal began October 26, 2007, and ended November 25, 2007. No comments were received regarding the proposed new sections.

The new sections are adopted under the Texas Education Code (TEC), §22.0832, which authorizes the TEA to review the national criminal history record information of an employee of an open-enrollment charter school to whom the TEC, §11.1059, applies and requires an open-enrollment charter school to provide the TEA with any information requested by the TEA for a complete review; TEC, §22.0833, which authorizes the commissioner to adopt rules necessary for the implementation of the national criminal history record information review of noncertified employees; TEC, §22.0836, which authorizes the commissioner to adopt rules necessary for the implementation of the national criminal history record information review of substitute teachers; TEC, §22.0837, which authorizes the TEA to by rule require a person submitting to a national criminal history record information review to pay a fee for the review in an amount not to exceed the amount of any fee imposed on an applicant for certification under the TEC, Chapter 21, Subchapter B; TEC, §22.085, which requires superintendents of school districts and chief operating officers of open-enrollment charter schools to certify compliance to the TEA, and authorizes the State Board for Educator Certification, the administrative functions of which are provided by the TEA, to sanction certified educators who fail to comply with §22.085(a); and TEC, §12.1162, which requires the commissioner to adopt rules implementing additional sanctions for open-enrollment charter schools.

The new sections implement the Texas Education Code, §§22.0832, 22.0833, 22.0836, 22.0837, and 22.085, as added and amended by Senate Bill 9, 80th Texas Legislature, 2007, and TEC, §12.1162.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 100. GENERAL PROVISIONS

22 TAC §100.3

The Texas State Board of Dental Examiners (Board) adopts the amendment of §100.3. The amendment repeats the language of §254.018 of the Occupations Code, prohibiting a member of the board from serving as an expert witness in certain circumstances without prior approval from the board. The amendment is adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7199) and will not be republished.

The justification of the rule action is §254.018 of the Occupations Code, and will reiterate the language of the statute.

No comments were received.

The section is adopted under Texas Government Code §§2001.021 et seq., and Texas Occupations Code §254.001,

which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0972

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CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The Texas State Board of Dental Examiners (Board) adopts the amendment of §104.1, regarding continuing education requirements. The amendment is adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7200) and will not be republished.

The amendment allows SBDE consultants to receive up to six (6) hours of continuing education annually for completing expert opinion reviews of SBDE cases. The amendment is intended to acknowledge the depth of research and analysis required to complete case reviews, which are performed by dentists volunteering their service to the State of Texas.

No comments were received.

The section is adopted under Texas Government Code §§2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0972

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CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER E. BUSINESS PROMOTION

22 TAC §108.60

The Texas State Board of Dental Examiners (Board) adopts the amendment of §108.60, regarding false, misleading or deceptive referral schemes. The amendment is adopted without changes to the proposed text as published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4519) and will not be republished.

The amendment is adopted to update the language from dental hygiene certificate holder to dental hygiene licensee.

No comments were received.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
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SUBCHAPTER F. CONTRACTUAL AGREEMENTS

22 TAC §108.72

The Texas State Board of Dental Examiners (Board) adopts new §108.72, regarding a dental custodian of records. The rule is adopted without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7201) and will not be republished.

The adopted new rule sets out procedures to be followed by a dental custodian of records, required by §258.0511(c) of the Occupations Code.

No comments were received.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherri Sanders Meek
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CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

22 TAC §115.1

The Texas State Board of Dental Examiners (Board) adopts the amendment of §115.1, concerning the definitions of "General Supervision" and "Direct Supervision". The amendment is adopted without changes to the proposed text as published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4520) and will not be republished.

The amendment is adopted to clarify the definition of general supervision to say that a dentist may or may not be present on the premises when a dental hygienist performs an allowed procedure under general supervision. The amendment also includes the definition of direct supervision for greater clarification, as the two terms and definitions will appear together.

No comments were received.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations Code, §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0972

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22 TAC §115.4

The Texas State Board of Dental Examiners (Board) adopts the amendment of §115.4, concerning the placement of site specific subgingival medicaments. The amendment is adopted without changes to the proposed text as published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4520) and will not be republished.

The amendment is adopted to change the standard from direct supervision to general supervision for a dentist who supervises a dental hygienist placing site specific subgingival medicaments. The amendment also updates the code reference and re-orders paragraphs (1) and (2) for better clarity.

A comment was received from the Texas Dental Association, opposing the amendment. No rationale was given. The Board feels this adopted amendment is appropriate, as site specific subgingival medicaments are topical in nature. The placement of topical drugs is defined as the practice of dental hygiene in §262.002 and, as such, can be performed by a Texas-licensed hygienist under general supervision. No restriction is placed on dentists who choose to delegate this procedure under direct supervision.

The section is adopted under Texas Government Code, §2001.021 et seq., and Texas Occupations, Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The adopted section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 475-0972

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 173. PHYSICIAN PROFILES

22 TAC §§173.1, 173.2, 173.5

The Texas Medical Board (Board) adopts amendments to §§173.1, 173.2 and 173.5, concerning Physician Profiles, without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6237) and will not be republished.

The amendments update the name of the Texas Medical Board, set grounds for disciplinary action to include the omission of required information when providing physician profile information, and establish when the Board will amend a physician's profile.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 173, Physician Profiles.

Prior to publishing the proposed amendments, the Board sought stakeholder input through the Licensure and Enforcement Stakeholder Groups, which made comments on the suggested changes to the rules at a meetings held on May 16, 2007 and October 24, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on November 30, 2007.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2007.

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Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: December 30, 2007
Proposal publication date: September 14, 2007
For further information, please call: (512) 305-7016

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CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

22 TAC §196.2, §196.3

The Texas Medical Board (Board) adopts the amendments to §196.2 and §196.3, concerning voluntary surrender of a medical license, without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6239) and will not be republished.

The amendments update the section titles for §196.4 and §167.5 which are referenced in the chapter.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 196, Voluntary Relinquishment or Surrender of a Medical License.

Prior to publishing the proposed amendments, the Board sought stakeholder input through the Licensure and Enforcement Stakeholder Groups, which made comments on the suggested changes to the rules at a meetings held on May 16, 2007 and October 24, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on November 30, 2007.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 198. UNLICENSED PRACTICE

22 TAC §198.2, §198.3

The Texas Medical Board (Board) adopts amendments to §198.2 and §198.3, concerning unlicensed practice, without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6240) and will not be republished.

The amendments update the name of the Texas Department of State Health Services and provides cite to Chapter 187 of the Board's rules.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 198, Unlicensed Practice.

Prior to publishing the proposed amendments, the Board sought stakeholder input through the Licensure and Enforcement Stakeholder Groups, which made comments on the suggested changes to the rules at a meetings held on May 16, 2007 and October 24, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on November 30, 2007.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §§199.1, 199.3 - 199.5

The Texas Medical Board (Board) adopts the amendments to §§199.1 and 199.3 - 199.5, concerning Public Information. Sections 199.4 and 199.5 are adopted without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6241) and will not be republished. Sections 199.1 and 199.3, are adopted with non-substantive changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6241). The text of the rules will be republished.

The amendments provide that the Public Information committee is responsible for the Board's website, update the names of the Texas Medical Board, correctly cites to the Office of the Attorney General in relation to charges for copies of public records, and specifies that physicians who have any ownership interested in a niche hospital must report that interest to the Department of State Health Services.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 199, Public Information.

The Board received no public written comments and no one appeared to testify at the public hearing held on November 30, 2007.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§199.1. Public Information Committee.

(a) The board shall maintain the Public Information Committee as a standing and permanent committee of the board.

(b) As set forth in Chapter 161 of this title (relating to General Provisions), the responsibilities and authority of the Public Information Committee include those duties and powers set forth below and in this chapter, as well as such other responsibilities and authority which the board from time to time may delegate:

(1) develop informational brochures for distribution to the public;

(2) review and make recommendations to the board in regard to press releases, newsletters, and other publications;

(3) exhibit display booths at conventions;

(4) study and make recommendations to the board regarding all aspects of public information or public relations;

(5) make recommendations to the board regarding matters brought to the attention of the Public Information Committee; and

(6) maintain a website that includes information required by statute and that is easily accessible to the public.

§199.3. Requests for Information.

(a) The public may obtain copies of board newsletters, brochures, pamphlets, press releases and other board publications by written request to the attention of the Public Information Committee at the board's current mailing address, by fax, or by electronic mail to the board's designated email address.

(b) Public records of the board may be obtained to the extent allowed by law through a written request pursuant to the Public Information Act of Texas submitted to the attention of the Manager, Public Information at the board's current mailing address, by fax, or by electronic mail to the board's designated email address.

(c) The provision of written materials or records provided pursuant to a request made under this chapter shall be subject to applicable charges under this title and state law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 102. DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS

25 TAC §§102.1 - 102.5

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§102.1 - 102.5, concerning the distribution of tobacco settlement proceeds to political subdivisions without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5979) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to update the name of the agency, remove references to the former Board of Health, and make other minor text changes. The rules are still needed due to the continued responsibilities for implementing the Health and Safety Code, §§12.131 - 12.139, and the responsibilities of the department under the Agreement Regarding Disposition of Tobacco Settlement Proceeds filed on July 24, 1998, in United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 102.1 - 102.5 have been reviewed and the department has determined that reasons for

adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendments to §102.1, §102.2, and §102.5 reflect changes in the agency name, remove references to the Texas Board of Health, and update references to include the Executive Commissioner of the Health and Human Services Commission. The amendment to §102.3 adds text to include two more examples for which expenditures may or may not be counted as annual claims by a county that is not wholly within a hospital district. The amendment to §102.4 adds the text "or other supporting documentation" to the list of documents that a political subdivision being audited shall make available to the department or its contractor. The additional amendment to §102.5 authorizes the hearing examiner to have the authority to make findings of an overstatement of expenditures discovered after an audit.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period. The proposed rules were approved by the Tobacco Settlement Permanent Trust Account Administration Advisory Committee on November 27, 2007.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are adopted under the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2007.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: September 7, 2007
For further information, please call: (512) 458-7111 x6972

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CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.39

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts new §157.39, concerning the regulation of emergency medical services (EMS) providers without changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6243) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The new section creates an EMS training program that affiliated EMS personnel may use to assure and maintain ongoing professional competency. Health and Safety Code, Chapter 773, Subchapter A, requires the department to approve EMS training programs and to regulate EMS providers and EMS personnel in their providing for the prompt and efficient transportation of sick and injured patients, after necessary stabilization, and to encourage public access to that transportation in each area of the state. This rule was developed with input from EMS stakeholders and the Governor's EMS and Trauma Advisory Council (GETAC).

SECTION-BY-SECTION SUMMARY

This section establishes eligibility requirements and minimum training standards that a Texas licensed EMS provider must have and maintain to receive approval by the department for the provider to conduct a Comprehensive Clinical Management Program (CCMP) for Texas certified or licensed EMS personnel employed by or affiliated with that EMS provider, such that those personnel can become recertified or relicensed pursuant to §157.34(b)(5) of this title. The training program will assure that EMS personnel affiliated with the EMS provider conducting the CCMP will receive continuing EMS education, quality improvement, intensified individualized monitoring, mentoring, assessment and ongoing professional development as required by the standards outlined in this section.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §773.071, which allows the department to set fees in amounts necessary for the department to administer this subchapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: September 14, 2007
For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the repeal of §289.3, concerning infrasonic, sonic, and ultrasonic radiation (acoustic radiation), the amendment of §289.130, concerning the Radiation Advisory Board, the amendment of §289.205, concerning hearing and enforcement procedures, and the repeal of §289.257 and new §289.257, concerning packaging and transportation of radioactive material. The amendment to §289.205, and new §289.257 are adopted with changes to the proposed text as published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6249). The repeal of §289.3, and §289.257, and amendment to §289.130 are adopted without changes, and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal of §289.3 removes an unnecessary regulation. This regulation has not been updated since 1975 and is not used in the regulatory duties of the department.

The amendment to §289.130 provides corrections and clarifications due to the reorganization that created the department as well as the removal of some redundancy with the Health and Safety Code.

The amendment to §289.205 provides corrections and clarifications. Information intended to clarify the definitions of severity levels of violations, the response to notices of violation, and the criteria used in elevating or reducing severity levels was added.

The repeal of and new §289.257 are necessary to modify transportation requirements for shipment of radioactive material. Most of these requirements are items of compatibility with the United States Nuclear Regulatory Commission (NRC) and as an agreement state with the NRC, Texas must adopt them.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.3 has been reviewed and the department has determined that the reasons for adopting the section no longer exist and the rule on this subject is not needed. Sections 289.130, 289.205, and 289.257 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

The repeal of §289.3 is necessary because the ultrasonic, infrasonic, and sonic radiation technology addressed in the rule is not regulated by the department. The rule has not been enforced by the department for more than 20 years.

The revisions to §289.130 are necessary to delete references to the Texas Board of Health, which no longer exists and to provide the appropriate references to the Texas Health and Human Services Commission, the department, and the Railroad Commission of Texas. These changes are made in §289.130(c), §289.130(d)(1), and new §289.130(m)(1) and (2).

Information is deleted from §289.130(d) to limit repetition of information from the Health and Safety Code.

Current §289.130(e) concerning the Radiation Advisory Board review and duration section, is deleted because in 2003 the Executive Commissioner of the Health and Human Services Commission exempted the Radiation Advisory Board from abolition based on legislation that authorized the Executive Commissioner to exempt certain advisory bodies from abolition. Subsequent subsections are renumbered. The change is reflected in new §289.130(e) - (o).

New §289.130(e) adds the complete reference to the Health and Safety Code for consistency.

New §289.130(h)(2) deletes the requirement of specific efforts necessary for department staff in making the required meeting arrangements because this requirement is no longer valid.

In new §289.130(k)(5)(A), reference to the "Texas Board of Health" was deleted as a correction because the Board no longer exists.

In new §289.130(n), "the department" replaces "Texas Board of Health" to clarify to whom the required reports shall be filed. In addition, "Commissioner of the department or his designee" replaces "Texas Board of Health" as to whom the advisory board should file its annual report and details on the required report were eliminated to allow for flexibility.

The revisions to §289.205 are necessary because the current rule did not clearly convey the requirements for responding to a notice of violation in §289.205(i) or the criteria used to elevate or reduce severity levels in §289.205(k). Throughout §289.205, the word "under" was replaced with the words "in accordance with" to comply with *Texas Register* form and style suggestions. The change is reflected in §289.205(c), (g)(1)(A), (i)(6), (j)(3)(D), (l)(3), and (m)(5).

The definition of "administrative penalty" in §289.205(b)(1) was revised to add "Texas Radiation Control" before "Act" to state the complete title of the referenced Act and "(Act)" was added after "Act" to specify the acronym that will be used throughout the section for simplification. The definitions in §289.205(b)(3) and (7) are revised to replace the word "under" with the words "in accordance with" to comply with *Texas Register* form and style suggestions.

In §289.205(b)(8) and §289.205(i)(5) and (6), the term "enforcement conference" is deleted in the rule and replaced with "informal conference" to reflect the new definition in §289.205(b)(9). Section 289.205(i)(7) replaces the word "accorded" with the word "afforded" for clarification.

Section 289.205(b)(12) adds the words "prepared by the department" after the word "statement" to clarify who is responsible for preparing the written statement described in this definition. In addition, the requirement for a person who receives the notice to provide a written statement is deleted within the definition because this requirement is a compliance procedure and was, therefore, moved to §289.205(i)(1) which addresses the compliance procedures.

Section 289.205(j)(3)(C) deletes the phrase "severity levels and" in front of the word "percentages" and the phrase "of

base amounts" is added after the word "percentages" as a correction so as to properly state the purpose of the regulation. The percentages in the table are the items being adjusted in this paragraph, not the severity levels. The words "for each violation" are added after the word "penalty" in §289.205(j)(3)(D) to clarify that the penalty assessed takes into account each violation. In addition, the term "Office of General Counsel" is replaced with "department" in §289.205(j)(4) to clarify who is responsible for conducting settlement negotiations.

In §289.205(k)(1)(A) - (C), clarifying language is added to assist in the understanding of categories of severity levels of violations. Section 289.205(k)(3)(A) and (B) replaces the word "Violations" with the words "Severity levels" for clarification and to be consistent with the paragraph title. In addition, §289.205(k)(3)(A)(iv) adds the words "or grossly negligent" after the word "willful" and deletes the language that attempted to explain when a violation was deemed willful in order to add clarity. A new clause is added to §289.205(k)(3)(A) and (B) to include other mitigating factors to the list of reasons when a severity level may be elevated to a higher severity level.

In §289.205(l)(3), the reference to hearing procedures in 1 Texas Administrative Code (TAC), Chapter 155 was added for clarification.

Concerning new §289.257, the revision incorporates requirements that are items of compatibility with the NRC and Texas must adopt them. Changes from the repealed rule include additional definitions, changes in the A_1 and A_2 activity levels, exempt quantities and the addition of sections regarding exemption from classification as fissile material, and general licensing information for transporting fissile material.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, the University of Texas Southwestern, and the NRC. The commenters were in favor of the rules; however, they suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §289.205(l)(3), one commenter suggested adding the reference to "1 TAC, Chapter 155" in the discussion of hearing procedures and this section for clarity and continuity.

Response: The commission agrees and has added the reference.

Comment: Concerning §289.205(b)(8) and §289.205(i)(5) and (6), one commenter expressed that in changing the definition of "enforcement conference" to refer to what the department actually calls an "informal conference," the word "meeting" was misused instead of "conference." The term "conference" should be used and the definition should also reflect this change. The word "meeting" was changed to "conference" and the definition for "enforcement conference" was changed to become the definition for "informal conference."

Response: The commission agrees and has corrected the term and the definition.

Comment: Concerning §289.257(i)(5)(E)(v), one commenter noted that the reference to Table 257-2 should refer to Table 257-1.

Response: The commission agrees because this is an item of compatibility and the correction has been made accordingly.

Comment: Concerning the graphic in §289.257(i)(6)(E)(i), one commenter noted that the graphic incorrectly referenced "Pu-232" instead of "Pu-239."

Response: The commission agrees because this is an item of compatibility and the correction has been made accordingly.

Comment: Concerning §289.257(s), one commenter asks that the first sentence of this subsection be removed. The commenter suggests that this information regarding inspections of low-level radioactive waste shipments is new to regulation and questions whether the department has the capability to commit to these inspections.

Response: The commission disagrees because the commitment to inspections is not new to regulation, and has been in Texas Rules since March 1998. It appeared in the repealed rule §289.257 exactly as it appears in the new §289.257. There have been no incidents or complaints regarding implementation of this rule in the past and therefore no change is made at this time.

Comment: Concerning §289.257, one commenter expressed that Texas needs to add requirements equivalent to Title 10, Code of Federal Regulations (CFR), §§71.127, 71.129, 71.131, 71.133, and 71.135 regarding handling, storage, and shipping control; inspection, test, and operating status; nonconforming materials, parts, or components; corrective action; and quality assurance records to meet compatibility requirements assigned to those sections of Title 10, CFR, Part 71.

Response: The commission agrees and the items of compatibility have been added as new §289.257(x) - (bb), and references to relettering rule cites have been corrected.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. CONTROL OF RADIATION

25 TAC §289.3

STATUTORY AUTHORITY

The repeal is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION

25 TAC §289.130

The amendment is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. GENERAL

25 TAC §289.205

The amendment is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

§289.205. Hearing and Enforcement Procedures.

(a) Purpose. This section governs the following in accordance with the Texas Radiation Control Act (Act), the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health):

(1) proceedings for the granting, denying, renewing, transferring, amending, suspending, revoking, or annulling of a:

(A) license or certificate of registration;

(B) accreditation of a mammography facility; or

(C) industrial radiographer certification;

(2) determining compliance with or granting of exemptions from the requirements of this chapter, order, or condition of the license or certificate of registration;

(3) assessing administrative penalties; and

(4) determining propriety of other agency orders.

(b) Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative penalty--A monetary penalty assessed by the agency in accordance with the Texas Radiation Control Act (Act), §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(2) Administrative Law Judge (ALJ)--Administrative law judge from the State Office of Administrative Hearings.

(3) Applicant--A person seeking a license, certificate of registration, accreditation of mammography facility, or industrial radiographer certification, issued in accordance with the provisions of the Act and the requirements in this chapter.

(4) Certified industrial radiographer--An individual who meets the definition of radiographer as stated in §289.255(c) of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography).

(5) Commissioner--The commissioner of the Texas Department of State Health Services.

(6) Contested case--A proceeding in which the agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing.

(7) Director--The director of the radiation control program in accordance with the agency's jurisdiction.

(8) Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(9) Informal Conference--A meeting held by the department with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory, license condition, or registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the department.

(10) Interested person--A person who participates in a hearing concerning a contested case but who is not admitted as a party by the ALJ.

(11) Major amendment--An amendment to a license issued in accordance with the requirements of §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities) that:

(A) reflects a transfer of ownership of the licensed facility;

(B) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(C) authorizes a change of the method specified in the license for disposal of byproduct material as defined in the Act, §401.003(3)(B); or

(D) grants an exemption from any provision of §289.260 of this title.

(12) Notice of violation--A written statement prepared by the department of one or more alleged infringements of a legally binding requirement.

(13) Order--A specific directive contained in a legal document issued by the agency.

(14) Party--A person designated as such by the ALJ. A party may consist of the following:

(A) the agency;

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer; and

(C) any person affected.

(15) Person affected--A person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is:

(A) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located; or

(B) doing business or has a legal interest in land in the county or adjacent county.

(16) Preliminary report--A document prepared by the agency containing the following:

(A) a statement of facts on which the agency bases the conclusion that a violation has occurred;

(B) recommendations that an administrative penalty be imposed on the person charged;

(C) recommendations for the amount of that proposed penalty; and

(D) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(17) Radiation and Perpetual Care Account--An account established for the purposes described in the Act, §401.305.

(18) Requestor--A person claiming party status as a person affected.

(19) Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety or the environment.

(20) Violation--An infringement of any rule, license or registration condition, order of the agency, or any provision of the Act.

(c) Procedures for licensing actions in accordance with the Act, §401.054.

(1) Except as provided in subsections (d) - (f) of this section, when the agency grants, renews, denies, transfers, or amends any specific license for the possession of radioactive materials, or grants exemptions from requirements of this chapter, orders, or licenses in accordance with the Act, the agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register.* The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) Any person who considers himself/herself a person affected by an agency action described in paragraph (1) of this subsection or any applicant/licensee may request a hearing by submitting a written request to the director within 30 days after the notice is published in the *Texas Register.*

(A) The request for a hearing must contain the following:

(i) name and address of the person/applicant/licensee who considers himself/herself affected by agency action;

(ii) identification of the subject license;

(iii) reasons why the person/applicant/licensee considers himself/herself affected;

(iv) relief sought; and

(v) name and address of the attorney if the applicant/licensee or requestor is represented by an attorney.

(B) Failure to submit a written request for a hearing within 30 days could result in denial of party status and render the agency action final.

(3) Either the applicant/licensee or the agency may contest the standing of a requestor as a person affected by motion filed with the ALJ no later than ten days prior to the hearing. The requestor has the burden of proof in a hearing to determine whether the requestor is a person affected.

(4) The ALJ may designate parties at the commencement of the hearing on the merits.

(5) A hearing may be scheduled by the agency regardless of whether a request for a hearing has been received.

(d) Special procedures for issuing, renewing, or amending byproduct material licenses in accordance with §289.260 of this title.

(1) When the agency determines that the issuance or renewal, in accordance with §289.260 of this title, of a license to process materials resulting in byproduct material or to dispose of byproduct materials as defined in the Act, §401.003(3)(B), will have a significant impact on the human environment, the agency shall prepare or secure a written analysis of the impact and make it available to the public for written comment at least 30 days before a public hearing, if any, on the issuance or renewal of the license.

(2) At least 30 days prior to the issuance of a new license, renewal, or major amendment, a notice of such action will be published in the following:

(A) *Texas Register;* and

(B) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located. The applicant/licensee shall do the following:

(i) cause notice of the proposed action to be published and pay for the publication of the newspaper notice(s); and

(ii) file proof of publication required in this subparagraph with the agency within 30 days of publication. An affidavit by

the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(3) The notice referenced in paragraph (2) of this subsection shall contain at least the following:

(A) statement identifying the location of the proposed facility and a summary of the proposed actions;

(B) availability of an environmental analysis for the proposed facility; and

(C) offer of an opportunity for a hearing to any person affected.

(4) When a hearing is requested in writing within 30 days after publication of the notice described in paragraph (2) of this subsection, the procedures described in subsection (c)(3) and (4) of this section and Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title apply. Failure to submit a written request for a hearing in the form specified by subsection (c)(2) of this section within 30 days may result in no hearing being held and the proposed agency action being taken.

(5) A hearing may be scheduled by the agency regardless of whether a request for a hearing has been received.

(e) Special procedures for issuing or renewing licenses to process or store radioactive waste from other persons in accordance with §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities).

(1) At least 30 days prior to issuance or renewal of a license to process or store radioactive waste from other persons, in accordance with §289.254 of this title, a notice of such action will be published in the following:

(A) *Texas Register;* and

(B) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located. The applicant/licensee shall do the following:

(i) cause notice to be published and pay for the publication of the newspaper notice(s); and

(ii) file proof of publication of the notice required in paragraph (1)(B) of this subsection with the agency within 30 days of publication. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(2) The notice specified in paragraph (1) of this subsection shall contain at least the following:

(A) the agency's intent to issue or renew a license in accordance with §289.254 of this title;

(B) location of the proposed facility;

(C) in the case of a Category III storage or processing facility, the availability of an environmental analysis for each proposed activity the agency determines has a significant impact on the human environment; and

(D) opportunity for a person affected to request a hearing.

(3) A hearing will be held only when requested, unless scheduled by the agency on its own motion. When a hearing is requested in writing by the date stated in the notice described in paragraph (1) of this subsection, the procedures described in subsection (c)(3) and (4) of this section and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title apply. Failure to submit a written request for a hearing in the form prescribed in subsection (c)(2) of this section on or before the stated date could result in denial of party status and in issuance or renewal of the license by the commissioner.

(A) Notice of the hearing shall be published in the following:

(i) *Texas Register;* and

(ii) a newspaper published in each county in which the proposed facility is located or, in which the proposed facility will be located.

(B) Notice of the hearing shall contain the subject, time, date, and location of the hearing.

(C) The applicant/licensee shall cause notice to be published and pay for the publication of the newspaper notice(s).

(D) The applicant/licensee shall file proof of publication of the notice required in subparagraph (A)(ii) of this paragraph with the agency at least ten days before the hearing. An affidavit by the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(E) If no newspaper is published in the county or counties in which the proposed facility is to be located, a written copy of the notice of hearing shall be posted at the courthouse door and five other public places in the immediate locality to be affected for at least 30 days prior to the beginning of the hearing.

(F) The return of service by the sheriff or constable, or the affidavit of any credible person made on a written copy of the notice so posted showing the fact of the posting and filed with the agency at least ten days prior to the hearing date shall be conclusive evidence of posting.

(G) The applicant/licensee shall give written notice of the hearing by certified mail, addressed to the last known address, to persons shown on the current county tax records as owning property adjacent to the proposed site. The written notice shall contain the same information described in subparagraph (B) of this paragraph.

(i) The applicant/licensee shall furnish the agency with a list of names and addresses of the adjacent property owners no later than ten days before the hearing.

(ii) The list of names and addresses will be deemed accurate and valid if obtained from the current county tax records of the county where the adjacent property is located as of the mailing date of the notice of hearing. The information shall be certified by an appropriate county official.

(iii) The applicant/licensee shall certify to the mailing of the notice of hearing by certified mail, and proof of mailing to the proper address or the receipt shall be accepted at the hearing as conclusive evidence of the fact of the mailing.

(H) Failure to comply with the provisions of subparagraphs (A)(ii), (E), and (G) of this paragraph may result in denial of the license.

(f) Special procedures for amending waste licenses in accordance with §289.254 of this title.

(1) If the agency amends a license to process or store radioactive waste, in accordance with §289.254 of this title, the amendment will take effect immediately.

(2) Notice of amendment shall be published one time in the following:

(A) *Texas Register;*

(B) a newspaper of general circulation in the county or counties in which the licensed activity is located. The licensee shall file with the agency, within 30 days of publication, proof of publication of the notice.

(3) The licensee shall cause notice to be published and pay for publication of the newspaper notice(s).

(4) An affidavit from the publisher accompanied by a printed copy of the notice as published shall be conclusive evidence of publication.

(5) The notice shall contain the following:

(A) identity of the licensee and the license amended;

(B) a concise statement of the substance of the amendment; and

(C) opportunity for a person affected to request a hearing.

(6) The agency shall notify any person who has submitted an advance, written request to be notified of any proposed amendment to the license. Proof of mailing to the proper address shall be conclusive evidence of the agency's compliance.

(7) A person who considers himself/herself a person affected may request the agency to hold a hearing by writing the director, in the manner provided by subsection (c)(2) of this section, no later than 30 days after the notice is published. Failure to submit a written request for a hearing within 30 days could result in denial of party status and render the agency action final.

(8) Upon receipt of a request for hearing, the agency or the licensee may follow the procedures set out in subsection (c)(3) and (4) of this section to contest standing.

(9) Notice of a hearing on the merits shall be given in accordance with appropriate provisions of subsection (e)(3) of this section.

(g) Revocation of accreditation of mammography facilities.

(1) An accreditation of a mammography facility may be revoked, for any of the following:

(A) any material false statement in the application or any statement of fact required in accordance with the Act;

(B) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency to refuse to grant an accreditation of mammography facility on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(2) Before the agency revokes an accreditation of mammography facility, the agency shall give notice by personal service or by certified mail, addressed to the last known address, of the facts or conduct alleged to warrant the revocation by complaint, and order the accredited mammography facility to show cause why the mammography facility accreditation should not be revoked. The accredited mammography facility shall be given an opportunity to request a hearing on the matter no later than 30 days after service of the notice.

(3) Any accredited mammography facility against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing;

(ii) name, address, and identification number of the accredited mammography facility against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(h) Denial of an application for a license, certificate of registration, accreditation of a mammography facility, or industrial radiographer certification.

(1) When the agency contemplates denial of an application for a license, certificate of registration, accreditation of a mammography facility, or industrial radiographer certification, the licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered by personal service or certified mail, addressed to the last known address, to the licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer.

(2) Any applicant, licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing; and

(ii) name and address of the applicant, licensee, registrant, mammography facility seeking accreditation, or certified industrial radiographer;

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(i) Compliance procedures for licensees, registrants, certified industrial radiographers, and other persons.

(1) A licensee, registrant, certified industrial radiographer, or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

(A) steps taken by the person and the results achieved;

(B) corrective steps to be taken to prevent recurrence; and

(C) the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

(2) The terms and conditions of all licenses and certificates of registration shall be subject to amendment or modification. A license, certificate of registration, or industrial radiographer certification may be modified, suspended, or revoked by reason of amendments to the Act, or for violation of the Act, the requirements of this chapter, a condition of the license, certificate of registration, or an order of the agency.

(3) Any license, certificate of registration, or industrial radiographer certification may be modified, suspended, or revoked in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required in accordance with provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license, certificate of registration, or industrial radiographer certification on an original application; or

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, or of the license, certificate of registration, or industrial radiographer certification or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(4) If another state or federal entity takes an action such as modification, revocation, or suspension of the license, certificate of registration, or industrial radiographer certification, the agency may take a similar action against the licensee, registrant, or certified industrial radiographer.

(5) When the agency determines that the action provided for in paragraph (8) of this subsection or subsection (j) of this section is not to be taken immediately, the agency may offer the licensee, registrant, or certified industrial radiographer an opportunity to attend an informal conference to discuss the following with the agency:

(A) methods and schedules for correcting the violation(s); or

(B) methods and schedules for showing compliance with applicable provisions of the Act, the rules, license or registration conditions, or any orders of the agency.

(6) Notice of any informal conference shall be delivered by personal service, or certified mail, addressed to the last known address. An informal conference is not a prerequisite for the action to be taken in accordance with paragraph (8) of this subsection or subsection (j) of this section.

(7) Except in cases in which the occupational and public health, or safety requires otherwise, no license, certificate of registration, or industrial radiographer certification shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee, registrant, or certified industrial radiographer in writing, and the licensee, registrant, or certified industrial radiographer shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(8) When the agency contemplates modification, suspension, or revocation of the license, certificate of registration, or industrial radiographer certification, the licensee, registrant, or certified industrial radiographer shall be afforded the opportunity for a hearing. Notice of the contemplated action, along with a complaint, shall be given to the licensee, registrant, or certified industrial radiographer by personal service or certified mail, addressed to the last known address.

(9) Any applicant, licensee, registrant, or certified industrial radiographer against whom the agency contemplates an action described in paragraph (8) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing must contain the following:

(i) statement requesting a hearing;

(ii) name, address, and identification number of the licensee, registrant, or certified industrial radiographer against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(j) Assessment of administrative penalties.

(1) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Act, §401.384, and applicable sections of the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(2) Assessment of administrative penalties shall be based on the following criteria:

(A) the seriousness of the violation(s);

(B) previous compliance history;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other mitigating or enhancing factors.

(3) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

(A) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations.

(B) The following Tables IA and IB show the base administrative penalties.
Figure: 25 TAC §289.205(j)(3)(B) (No change.)

(C) Adjustments to the percentages of base amounts in Table IB may be made for the presence or absence of the following factors:

(i) prompt identification and reporting;

(ii) corrective action to prevent recurrence;

(iii) compliance history;

(iv) prior notice of similar event;

(v) multiple occurrences; and

(vi) negligence that resulted in or increased adverse effects.

(D) The penalty for each violation may be in an amount not to exceed $10,000 a day for a person who violates the Act or a rule, order, license or registration issued in accordance with the Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(4) The department may conduct settlement negotiations.

(k) Severity levels of violations for licensees, registrants, certified industrial radiographers, or other persons.

(1) Violations for licensees, registrants, certified industrial radiographers, or other persons shall be categorized by one of the following severity levels.

(A) Severity level I are violations that are most significant and may have a significant negative impact on occupational and/or public health and safety or on the environment. Severity level I viola-

tions are most significant and may have a significant negative impact by increasing the risk of unauthorized use of radioactive material that would be detrimental to public health and safety.

(B) Severity level II are violations that are very significant and may have a negative impact on occupational and/or public health and safety or on the environment. Severity level II violations are very significant and may have a negative impact by increasing the risk of unauthorized use of radioactive material that would be detrimental to public health and safety.

(C) Severity level III are violations that are significant and which, if not corrected, could threaten occupational and/or public health and safety or the environment. Severity level III are significant and, if not corrected, could increase the risk of unauthorized use of radioactive material that would be detrimental to public health and safety.

(D) Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

(E) Severity level V are violations that are of minor safety or environmental significance.

(2) Additional violations for mammography registrants. Violations for mammography registrants shall be categorized by one of the following severity levels.

(A) Severity level I violations indicate a serious noncompliance that may adversely affect image quality or that may compromise the quality of mammography services.

(B) Severity level II violations indicate key quality system requirements are being met, but there is a failure to meet one or more quality standards that may lead to a compromise of the quality of mammography services.

(C) Severity level III violations indicate that the quality system requirements are being met, but minor corrective actions are required for compliance with the quality standards.

(D) Severity level IV violations indicate that the quality system requirements and standards are being met, but minor corrective actions are required for compliance.

(3) Criteria to elevate or reduce severity levels.

(A) Severity levels may be elevated to a higher severity level for the following reasons:

(i) more than one violation resulted from the same underlying cause;

(ii) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of licensed or registered activities;

(iii) a violation occurred multiple times between inspections;

(iv) a violation was willful or grossly negligent;

(v) compliance history; or

(vi) other mitigating factors.

(B) Severity levels may be reduced to a lower level for the following reasons:

(i) the licensee/registrant identified and corrected the violation prior to the agency inspection;

(ii) the licensee/registrant's actions corrected the violation and prevented recurrence; or

(iii) other mitigating factors.

(4) Examples of severity levels. Examples of severity levels are available upon request to the agency.

(l) Impoundment of sources of radiation.

(1) In the event of an emergency, the agency shall have the authority to impound or order the impounding of sources of radiation possessed by any person not equipped to observe or failing to observe the provisions of the Act, or any rules, license or registration conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the *Texas Register* no later than 30 days following the end of the month in which the action was taken.

(2) At the agency's discretion, the impounded sources of radiation may be disposed of by:

(A) returning the source of radiation to a properly licensed or registered owner, upon proof of ownership, who did not cause the emergency;

(B) releasing the source of radiation as evidence to police or courts;

(C) returning the source of radiation to a licensee or registrant after the emergency is over and settlement of any compliance action; or

(D) sale, destruction or other disposition within the agency's discretion.

(3) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the impounded source of radiation of the intention to dispose of the source of radiation. Notice shall be the same as provided in subsection (i)(8) of this section. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing in accordance with 1 TAC, Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subsection (i)(9) of this section, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(4) Upon agency disposition of a source of radiation, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested.

(5) If the agency determines from the facts available to the agency that an impounded source of radiation is abandoned, with no reasonable evidence showing its owner or possessor, the agency may make such disposition of the source of radiation as it sees fit.

(m) Emergency orders.

(1) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register.* The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) In addition to the requirements of paragraph (1) of this subsection, the agency shall issue an order directing any action and corrective measure needed to remedy or neutralize the following emergency situations:

(A) when the agency determines that byproduct material as defined in the Act, §401.003(3)(B), or the operation generating the byproduct material, or that radioactive waste threatens the public health or safety or the environment; and

(B) if the person managing the byproduct material, or the operation generating the byproduct material or the radioactive waste, is unable to correct or neutralize the threat.

(3) An emergency order takes effect immediately upon service.

(4) Any person receiving an emergency order shall comply immediately.

(5) The agency shall use any security provided by a licensee in accordance with the Act to pay toward the costs of such actions and corrective measures taken. If the cost of actions and corrective measures require more funds than the security has provided, the agency shall request the Attorney General to seek reimbursement from the licensee or person causing the threat.

(A) The agency may send a copy of its order specified in this subsection to the Comptroller of Public Accounts together with necessary documents authorizing the Comptroller of Public Accounts to enforce security supplied by the licensee, convert the necessary amount of security into cash, and disburse from this security in the fund the amount necessary to pay costs of the agency actions and corrective measures. The agency shall direct the comptroller as to the amounts and recipients of the funds.

(B) The agency may request the Attorney General to file suit for reimbursement if the agency uses security from the Radiation and Perpetual Care Account to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Act or requirements of this chapter, license, or order of the agency.

(6) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(A) The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

(B) At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(i) determine that no further action is warranted;

(ii) amend the license or certificate of registration;

(iii) revoke or suspend the license, certificate of registration, or industrial radiographer certification;

(iv) rescind the emergency order; or

(v) issue such other order as is appropriate.

(C) The application and hearing shall not delay compliance with the emergency order.

(n) Miscellaneous provisions.

(1) Computation of time. A time period established by the requirements of this chapter shall begin on the first day after the event that invokes the time period. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the period shall end on the next day that is not a Saturday, Sunday, or state or federal holiday. The time period shall expire at 5:00 p.m. of the last day of the computed period.

(2) Interested person.

(A) An interested person may:

(i) make sworn or unsworn statements;

(ii) attend a hearing and may present evidence after the presentation of evidence by the parties; or

(iii) be represented by an attorney.

(B) An interested person may not:

(i) cross-examine the witnesses of the parties;

(ii) object to evidence presented by the parties; or

(iii) appeal a decision rendered by the agency.

(C) An interested person is not responsible for sharing the costs of the transcription of the hearing, but may purchase a transcript.

(D) The parties may cross-examine witnesses presented by an interested person.

(E) At the discretion of the ALJ an interested person may make an unsworn statement. Such statement shall not be made a part of the record.

(3) Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the ALJ specifies another location.

(4) Prepared testimony. The following shall apply to written testimony of a witness:

(A) the testimony of a witness may be reduced to writing and offered into evidence as an exhibit, provided:

(i) the witness is present and has been sworn;

(ii) the witness identifies and adopts the written testimony as his/her own; and

(iii) all parties receive a copy of the testimony at least ten days before its submission at the hearing.

(B) written testimony shall be subject to objection and may be stricken by the ALJ. The witness shall be subject to cross-examination.

(5) Prior testimony. Testimony and evidence presented in the hearing to determine standing have the same weight at the hearing on the merits if a tape recording or written transcript of the standing hearing is available.

(6) Non-party witness and mileage fees.

(A) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation

and other costs at rates established by the current Appropriations Act for state employees.

(B) The person requesting the attendance of the witness or deponent must deposit with the agency the funds estimated to accrue in accordance with subparagraph (A) of this paragraph when filing a motion for the issuance of a subpoena or a commission to take a deposition.

(7) Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706163
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 27, 2007
Proposal publication date: September 14, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.257

The repeal is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

25 TAC §289.257

The new rule is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

§289.257. Packaging and Transportation of Radioactive Material.

(a) Purpose.

(1) This section establishes requirements for packaging, preparation for shipment, and transportation of radioactive material including radioactive waste.

(2) The packaging and transport of radioactive material are also subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), §289.252 of this title (relating to Licensing of Radioactive Material), §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material, and §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities) and to the regulations of other agencies (e.g., the United States Department of Transportation (DOT) and the United States Postal Service) having jurisdiction over means of transport. The requirements of this section are in addition to, and not in substitution for, other requirements.

(b) Scope.

(1) The requirements of this section apply to any licensee authorized by a specific or general license issued by the agency to receive, possess, use, or transfer radioactive material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the agency license, or transports that material on public highways. No provision of this section authorizes possession of radioactive material.

(2) Exemptions from the requirements for a license in subsection (c) of this section are specified in subsection (f) of this section. The general license in subsection (i) of this section requires that a United States Nuclear Regulatory Commission (NRC) certificate of compliance or other package approval be issued for the package to be used in accordance with the general license. The transport of radioactive material or delivery of radioactive material to a carrier for transport is subject to the operating controls and procedural requirements of subsections (l) - (q) of this section and to the general provisions of subsections (a) - (e) of this section, including DOT regulations referenced in subsection (e) of this section.

(c) Requirement for license. Except as authorized in a general or specific license issued by the agency, or as exempted in accordance with this section, no licensee may transport radioactive material or deliver radioactive material to a carrier for transport.

(d) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly

indicates otherwise. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The International System of Units (SI) followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, SI units shall be used.

(1) A_1--The maximum activity of special form radioactive material permitted in a Type A package. This value is either listed in Table 257-3 of subsection (ff)(6) of this section, or may be derived in accordance with the procedure prescribed in subsection (ff) of this section.

(2) A_2--The maximum activity of radioactive material, other than special form, low specific activity (LSA) and surface contaminated object (SCO) material, permitted in a Type A package. This value is either listed in Table 257-3 of subsection (ff)(6) of this section, or may be derived in accordance with the procedure prescribed in subsection (ff) of this section.

(3) BRC Forms 540, 540A, 541, 541A, 542, and 542A--Official agency forms referenced in subsection (gg) of this section which includes the information required by DOT in Title 49, Code of Federal Regulations (CFR), Part 172. BRC Form 541B contains additional information for low-level radioactive waste (LLRW) shipments to a Texas LLRW disposal facility. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, BRC Forms 541 (and 541A and 541B) and BRC Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media shall have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

(4) Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft

(5) Certificate holder--A person who has been issued a certificate of compliance or other package approval by the agency.

(6) Certificate of compliance--The certificate issued by the NRC that approves the design of a package for the transportation of radioactive materials.

(7) Chelating agent--Amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carbolic acid, and glucinic acid).

(8) Chemical description--A description of the principal chemical characteristics of a LLRW.

(9) Consignee--The designated receiver of the shipment of low-level radioactive waste.

(10) Consignment--Each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

(11) Containment system--The assembly of components of the packaging intended to retain the radioactive material during transport.

(12) Conveyance--For transport on:

(A) public highway or rail by transport vehicle or large freight container;

(B) water by vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(C) aircraft.

(13) Criticality Safety Index (CSI)--The dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in subsection (i) of this section and Title 10, CFR, §71.59.

(14) Decontamination facility--A facility operating in accordance with an NRC, agreement state, or agency license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives, and, for purposes of this section, is not considered to be a consignee for LLRW shipments.

(15) Deuterium--For the purposes of this section, this means deuterium and any deuterium compound, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(16) Disposal container--A transport container principally used to confine LLRW during disposal operations at a land disposal facility (also see definition for high integrity container). Note that for some shipments, the disposal container may be the transport package.

(17) Environmental Protection Agency (EPA) identification number--The number received by a transporter following application to the administrator of EPA as required by Title 40, CFR, Part 263.

(18) Exclusive use--The sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier shall ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor shall issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

(19) Fissile material--The radionuclides plutonium-239, plutonium-241, uranium-233, uranium-235, or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium, and natural uranium or depleted uranium that has been irradiated in thermal reactors only are not included in this definition. Agency jurisdiction extends only to special nuclear material in quantities not sufficient to form a "critical mass" as defined in §289.201(b) of this title. Certain exclusions from fissile material controls are provided in subsection (h) of this section.

(20) Generator--A licensee operating in accordance with an NRC, agreement state, or agency license who:

(A) is a waste generator as defined in this section; or

(B) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

(21) Graphite--For the purposes of this section, this means graphite with a boron equivalent content of less than five parts per million and density greater than 1.5 grams per cubic centimeter.

(22) High integrity container (HIC)--A container commonly designed to meet the structural stability requirements of Title 10, CFR, §61.56, and to meet DOT requirements for a Type A package.

(23) Industrial package (IP)--A packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of Title 49, CFR, §173.410 and §173.411. Industrial packages are categorized in Title 49, CFR, §173.411 as either:

(A) Industrial package Type 1 (IP-1);

(B) Industrial package Type 2 (IP-2); or

(C) Industrial package Type 3 (IP-3).

(24) Low-level radioactive waste (LLRW)--Radioactive material that meets the following criteria:

(A) LLRW is radioactive material that is:

(i) discarded or unwanted and is not exempt by rule adopted in accordance with the Texas Radiation Control Act (Act), Health and Safety Code, §401.106;

(ii) waste, as that term is defined in Title 10, CFR, §61.2; and

(iii) subject to:

(I) concentration limits established in Title 10, CFR, §61.55, or compatible rules adopted by the agency or the Texas Commission on Environmental Quality (TCEQ), as applicable; and

(II) disposal criteria established in Title 10, CFR, or established by the agency or TCEQ, as applicable.

(B) LLRW does not include:

(i) high-level radioactive waste as defined in Title 10, CFR, §60.2;

(ii) spent nuclear fuel as defined in Title 10, CFR, §72.3;

(iii) byproduct material defined in the Act, Health and Safety Code, §401.003(3)(B);

(iv) naturally occurring radioactive material (NORM) waste that is not oil and gas NORM waste;

(v) oil and gas NORM waste; or

(vi) transuranics greater than 100 nanocuries per gram.

(25) Low specific activity (LSA) material--Radioactive material with limited specific activity which is nonfissile or is excepted in accordance with subsection (h) of this section, and which satisfies the following descriptions and limits set forth. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material shall be in one of the following three groups:

(A) LSA-I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores which are not intended to be processed for the use of these radionuclides; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material for which the A_2 value is unlimited; or

(iv) Other radioactive material (e.g.: mill tailings, contaminated earth, concrete, rubble, other debris, and activated material) in which the radioactivity is distributed throughout, and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with subsection (ff) of this section.

(B) LSA-II.

(i) Water with tritium concentration up to 0.8 terabecquerel per liter (TBq/l) (20.0 curies per liter (Ci/l)); or

(ii) Other material in which the radioactivity is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(C) LSA-III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that satisfy the requirements of Title 10, CFR, §71.77 in which:

(i) the radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

(ii) the radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even with a loss of packaging, the loss of radioactive material per package by leaching, when placed in water for seven days, would not exceed 0.1 A_2; and

(iii) the average specific activity of the solid does not exceed 2×10^{-3} A_2/g.

(26) Low toxicity alpha emitters--Natural uranium, depleted uranium, natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than ten days.

(27) Maximum normal operating pressure--The maximum gauge pressure that would develop in the containment system in a period of one year under the heat condition specified in Title 10, CFR, §71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

(28) Natural thorium--Thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

(29) Normal form radioactive material--Radioactive material that has not been demonstrated to qualify as special form radioactive material.

(30) Package--The packaging together with its radioactive contents as presented for transport.

(A) Fissile material package, Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package--A fissile material packaging together with its fissile material contents.

(B) Type A package--A Type A packaging together with its radioactive contents. A Type A package is defined and shall comply with the DOT regulations in Title 49, CFR, Part 173.

(C) Type B package--A Type B packaging together with its radioactive contents. On approval by the NRC, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kilopascals (kPa)

(100 pounds per square inch (lb/in^2)) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in Title 10, CFR, §71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in Title 49, CFR, Part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in Title 10, CFR, §71.19.

(31) Packaging--The assembly of components necessary to ensure compliance with the packaging requirements of this section. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(32) Physical description--The items called for on BRC Form 541 to describe a LLRW.

(33) Residual waste--LLRW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

(34) Shipper--The licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers LLRW for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator. This definition applies only to shipments of LLRW shipped to a Texas LLRW disposal facility.

(35) Site of usage--The licensee's facility, including all buildings and structures between which radioactive material is transported and all roadways that are not within the public domain on which radioactive material can be transported.

(36) Specific activity of a radionuclide--The radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(37) Spent nuclear fuel or spent fuel--Fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

(38) Surface contaminated object (SCO)--A solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. A SCO shall be in one of the following two groups with surface activity not exceeding the following limits:

(A) SCO-I--A solid object on which:

(i) the non-fixed contamination on the accessible surface averaged over 300 square centimeters (cm^2) (or the area of the surface if less than 300 cm^2) does not exceed 4 becquerels per square centimeter (Bq/cm^2) (10^{-4} microcurie per square centimeter ($\mu Ci/cm^2$)) for beta and gamma and low toxicity alpha emitters, or 4×10^{-1} Bq/cm^2 (10^{-5} $\mu Ci/cm^2$) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (10^{-1} $\mu Ci/cm^2$) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (10^{-1} $\mu Ci/cm^2$) for all other alpha emitters.

(B) SCO-II--A solid object on which the limits for SCO-I are exceeded and on which the following limits are not exceeded:

(i) the non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm^2 (10^{-3} $\mu Ci/cm^2$) for all other alpha emitters;

(ii) the fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 $\mu Ci/cm^2$) for all other alpha emitters; and

(iii) the non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 $\mu Ci/cm^2$) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 $\mu Ci/cm^2$) for all other alpha emitters.

(39) Uniform Low-Level Radioactive Waste Manifest or uniform manifest--The combination of BRC Forms 540, 541, and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

(40) Unirradiated uranium--Uranium containing not more than 2×10^3 Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235, and not more than 5×10^{-3} g of uranium-236 per gram of uranium-235.

(41) Uranium--Natural, depleted, enriched:

(A) Natural uranium--Uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(B) Depleted uranium--Uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(C) Enriched uranium--Uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

(42) Waste collector--An entity, operating in accordance with an NRC, agreement state, or agency license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

(43) Waste description--The physical, chemical and radiological description of a LLRW as called for on BRC Form 541.

(44) Waste generator--An entity, operating in accordance with an NRC, agreement state, or agency license, who:

(A) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use; and

(B) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a waste generator if the transfer of LLRW from its facility is defined as residual waste.

(45) Waste processor--An entity, operating in accordance with an NRC or agreement state license, whose principal purpose is to process, repackage, or otherwise treat LLRW or waste generated by others prior to eventual transfer of waste to a licensed LLRW land disposal facility.

(46) Waste type--A waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically-defined media).

(e) Transportation of radioactive material.

(1) Each licensee who transports radioactive material outside the site of usage as specified in the agency license, transports on public highways, or delivers radioactive material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in Title 49, CFR, Part 107, Parts 171 - 189 and 390 - 397 appropriate to the mode of transport. The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging - Title 49, CFR, Part 173: Subparts A, B, and I.

(B) Marking and labeling - Title 49, CFR, Part 172: Subpart D, and §§172.400 - 172.407 and §§172.436 - 172.441 of Subpart E.

(C) Placarding - Title 49, CFR, Part 172: Subpart F, especially §§172.500 - 172.519 and §172.556, and Appendices B and C.

(D) Accident reporting - Title 49, CFR, Part 171: §171.15 and §171.16.

(E) Shipping papers and emergency information - Title 49, CFR, Part 172: Subparts C and G.

(F) Hazardous material employee training - Title 49, CFR, Part 172: Subpart H.

(G) Hazardous material shipper/carrier registration - Title 49, CFR, Part 107: Subpart G.

(H) Security Plans - Title 49, CFR, Part 172: Subpart I.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail: Title 49, CFR Part 174: Subparts A through D and K.

(B) Air: Title 49, CFR Part 175.

(C) Vessel: Title 49, CFR Part 176: Subparts A through F and M.

(D) Public Highway: Title 49, CFR Part 177 and Parts 390 through 397.

(3) If DOT regulations are not applicable to a shipment of radioactive material (i.e. DOT does not have jurisdiction), the licensee shall conform to DOT standards and requirements specified in paragraph (1) of this subsection to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements shall be filed and approved by the agency. Any notification referred to in those requirements, shall be submitted to the agency.

(f) Exemption for low-level radioactive materials.

(1) A licensee is exempt from all requirements of this section with respect to shipment or carriage of the following low-level materials:

(A) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in Table 257-4 of subsection (ff)(7) of this section.

(B) Materials for which the activity concentration is not greater than the activity concentration values specified in Table 257-4 of subsection (ff)(7) of this section, or for which the consignment activity is not greater than the limit for an exempt consignment found in Table 257-4 of subsection (ff)(7) of this section.

(2) Common and contract carriers, freight forwarders, and warehousemen, who are subject to the rules and regulations of the DOT or the United States Postal Service (Title 39, CFR, Parts 14 and 15), are exempt from these regulations to the extent that they transport or store sources of radiation in the regular course of their carriage for another or storage incident thereto. Private carriers who are subject to the rules and regulations of the DOT are exempted from these regulations to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of these regulations.

(3) Persons who discard licensed material in accordance with §289.202(fff) of this title are exempt from all requirements of this section.

(g) Exemption of physicians. Any physician licensed by a State to dispense drugs in the practice of medicine is exempt from Title 10, CFR, §71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption shall be licensed under Title 10, CFR, Part 35 or the equivalent agreement state regulations.

(h) Exemption from classification as fissile material. Fissile materials meeting the requirements of at least one of the paragraphs (1) through (6) of this subsection are exempt from classification as fissile material and from the fissile material package standards of Title 10, CFR §71.55 and §71.59, but are subject to all other requirements of this section, except as noted.

(1) An individual package containing 2 grams or less fissile material.

(2) Individual or bulk packaging containing 15 grams or less of fissile material provided the package has at least 200 grams of solid nonfissile material for every gram of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass for solid nonfissile material.

(3) Solid fissile material commingled with solid non-fissile material.

(A) Low concentrations of solid fissile material commingled with solid nonfissile material provided:

(i) that there is at least 2000 grams of solid nonfissile material for every gram of fissile material; and

(ii) there is no more than 180 grams of fissile material distributed within 360 kg of contiguous non-fissile material.

(B) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package but shall not be included in determining the required mass of solid nonfissile material.

(4) Uranium enriched in uranium-235 to a maximum of 1% by weight, and with total plutonium and uranium-233 content of up to 1% of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass.

(5) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by mass, with a total plutonium and uranium-233 content not exceeding 0.002 percent of the mass of uranium, and with a minimum nitrogen to uranium atomic ratio (N/U) of 2. The material shall be contained in at least a DOT Type A package.

(6) Packages containing, individually, a total plutonium mass of not more than 1000 grams, of which not more than 20 percent by mass may consist of plutonium-239, plutonium-241, or any combination of these radionuclides.

(i) General license.

(1) NRC-approved package.

(A) A general license is issued to any licensee of the agency to transport, or to deliver to a carrier for transport, radioactive material in a package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(B) This general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of Title 10, CFR, Part 71, Subpart H.

(C) This general license applies only to a licensee who meets the following requirements:

(i) has a copy of the CoC or other approval by the NRC of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(ii) complies with the terms and conditions of the specific license, certificate, or other approval by the NRC, as applicable, and the applicable requirements of Title 10, CFR, Part 71, Subparts A, G, and H; and

(iii) Before the licensee's first use of the package, submits in writing to: ATTN: Document Control Desk, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in Title 10, CFR, Part 71, the licensee's name and license number and the package identification number specified in the package approval.

(D) This general license applies only when the package approval authorizes use of the package in accordance with this general license.

(E) For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of paragraph (2) of this subsection.

(F) For radiography containers, a program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of §289.255(m)(2)(B) of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), is deemed to satisfy the requirements of subparagraph (B) of this paragraph.

(2) Previously approved package.

(A) A Type B package previously approved by the NRC, but not designated as B(U), B(M), B(U)F or B(M)F in the identification number of the NRC certificate of compliance, or Type AF packages approved by the NRC prior to September 6, 1983, may be used in accordance with the general license of paragraph (1) of this subsection with the following additional conditions:

(i) fabrication of the packaging was satisfactorily completed before August 31, 1986, as demonstrated by application of its model number in accordance with subsection (k)(3) of this section;

(ii) a serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging ; and

(iii) subparagraph (A) of this paragraph expires October 1, 2008.

(B) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC but without the designation "-85" in the identification number of the NRC CoC, may be used in accordance with the general license of paragraph (1) of this subsection with the following additional conditions:

(i) fabrication of the package is satisfactorily completed by April 1, 1999, as demonstrated by application of its model number in accordance with subsection (k)(3) of this section;

(ii) a package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations Title 49, CFR §173.403; and

(iii) a serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(C) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC with the designation "-85" in the identification number of the NRC CoC, may be used in accordance with the general license of paragraph (1) of this subsection with the following additional conditions:

(i) Fabrication of the package shall be satisfactorily completed by December 31, 2006, as demonstrated by application of its model number in accordance with subsection (k)(3) of this section.

(ii) After December 31, 2003, a package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations Title 49, CFR, §173.403.

(3) DOT specification container.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in Title 49, CFR, Parts 173 and 178.

(B) This general license applies only to a licensee who:

(i) has a quality assurance program required by subsections (t), (u), and (v) of this section and Title 10, CFR, Part 71, Subpart H;

(ii) has a copy of the specification; and

(iii) complies with the terms and conditions of the specification and the applicable requirements of this section.

(C) The general license in subparagraph (A) of this paragraph is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States except by multilateral approval as defined in Title 49, CFR, §173.403.

(4) Use of foreign approved package.

(A) A general license is issued to any licensee to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by the DOT as meeting the applicable requirements of Title 49, CFR, §171.12.

(B) Except as otherwise provided by this section, the general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the applicable provisions of Title 10, CFR, Part 71.

(C) This general license applies only to international shipments.

(D) This general license applies only to a licensee who:

(i) has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate relating to the use and maintenance of the packaging and to the actions to be taken prior to shipment; and

(ii) complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of this section. With respect to the quality assurance provisions of Title 10, CFR, Part 71, the licensee is exempt from design, construction, and fabrication considerations.

(5) Fissile material.

(A) A general license is issued to any licensee to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section. The fissile material need not be contained in a package that meets the standards of this section; however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of Title 49, CFR, §173.417(a).

(B) The general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of Title 10, CFR, Part 71.

(C) The general license applies only when a package's contents:

(i) contain no more than a Type A quantity of radioactive material; and

(ii) contain less than 500 total grams of beryllium, graphite, or hydrogeneous material enriched in deuterium.

(D) The general license applies only to packages containing fissile material that are labeled with a CSI that:

(i) has been determined in accordance with paragraph (E) of this subsection;

(ii) has a value less than or equal to 10.0; and

(iii) for a shipment of multiple packages containing fissile material, the sum of the CSIs shall be less than or equal to 50.0 (for shipment on a nonexclusive use conveyance) and less than or equal to 100.0 (for shipment on an exclusive use conveyance).

(E) The CSI shall be as follows:

(i) the value for the CSI shall be greater than or equal to the number calculated by the following equation:

Figure: 25 TAC §289.257(i)(5)(E)(i)

(ii) the calculated CSI shall be rounded up to the first decimal place;

(iii) the values of X, Y, and Z used in the CSI equation shall be taken from Tables 257-1 or 257-2 of this clause, as appropriate;

Figure: 25 TAC §289.257(i)(5)(E)(iii)

(iv) if Table 257-2 of clause (iii) of this subparagraph is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium shall be assumed to be zero; and

(v) Table 257-1 values of clause (iii) of this subparagraph for X, Y, and Z shall be used to determine the CSI if:

(I) uranium-233 is present in the package;

(II) the mass of plutonium exceeds 1% of the mass of uranium-235;

(III) the uranium is of unknown uranium-235 enrichment, or greater than 24 weight percent enrichment; or

(IV) substances having a moderating effectiveness (i.e. an average hydrogen density greater than H_20) (e.g. certain hydrocarbon oils or plastics) are present in any form, except as polyethylene used for packing or wrapping.

(6) Plutonium-beryllium special form material.

(A) A general license is issued to any licensee to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance with this section This material need not be contained in a package that meets the standards of Title 10, CFR, Part 71, however, the material shall be contained in a Type A package. The Type A package shall also meet the DOT requirements of Title 49, CFR, §173.417(a).

(B) The general license applies only to a licensee who has a quality assurance program approved by the NRC as satisfying the provisions of Title 10, CFR, Part 71.

(C) The general license applies only when a package's contents:

(i) contain no more than a Type A quantity of material; and

(ii) contain less than 1000g of plutonium, provided that plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 g of the total quantity of plutonium in the package.

(D) The general license applies only to packages labeled with a CSI that:

(i) has been determined in accordance with subparagraph (E) of this paragraph;

(ii) has a value less than or equal to 100.0; and

(iii) for a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs shall be less than or equal to 50.0 (for shipment on a nonexclusive use conveyance) and less than or equal to 100.0 (for shipment on or exclusive use conveyance).

(E) The value for the CSI shall be as follows:

(i) the CSI shall be greater than or equal to the number calculated by the following equation:

Figure: 25 TAC §289.257(i)(6)(E)(i)

(ii) the calculated CSI shall be rounded up to the first decimal place.

(j) Assumptions as to unknown properties. When the isotopic abundance, mass, concentration, degree of irradiation, degree of moderation, or other pertinent property of fissile material in any package is not known, the licensee shall package the fissile material as if the unknown properties have credible values that will cause the maximum neutron multiplication.

(k) Preliminary determinations. Before the first use of any packaging for the shipment of licensed material the licensee shall:

(1) ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

(2) where the maximum normal operating pressure will exceed 35 kPa (5 lb/in^2) gauge, test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure; and

(3) conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by NRC. Before applying the model number, the licensee shall determine that the packaging has been fabricated in accordance with the design approved by the NRC.

(l) Routine determinations. Before each shipment of radioactive material, the licensee shall ensure that the package with its contents satisfies the applicable requirements of this section and of the license. The licensee shall determine that:

(1) the package is proper for the contents to be shipped;

(2) the package is in unimpaired physical condition except for superficial defects such as marks or dents;

(3) each closure device of the packaging, including any required gasket, is properly installed, secured, and free of defects;

(4) any system for containing liquid is adequately sealed and has adequate space or other specified provision for expansion of the liquid;

(5) any pressure relief device is operable and set in accordance with written procedures;

(6) the package has been loaded and closed in accordance with written procedures;

(7) for fissile material, any moderator or neutron absorber, if required, is present and in proper condition;

(8) any structural part of the package that could be used to lift or tie down the package during transport is rendered inoperable for that purpose, unless it satisfies the design requirements of Title 10, CFR, §71.45;

(9) the level of non-fixed (removable) radioactive contamination on the external surfaces of each package offered for shipment is as low as reasonably achievable (ALARA), and within the limits specified in DOT regulations in Title 49, CFR, §173.443;

(10) external radiation levels around the package and around the vehicle, if applicable, will not exceed the following limits at any time during transportation:

(A) Except as provided in subparagraph (B) of this paragraph, each package of radioactive materials offered for transportation shall be designed and prepared for shipment so that under conditions normally incident to transportation the radiation level does not exceed 2 mSv/hr (200 mrem/hr) at any point on the external surface of the package, and the transport index does not exceed 10.

(B) A package that exceeds the radiation level limits specified in subparagraph (A) of this paragraph shall be transported by exclusive use shipment only, and the radiation levels for such shipment shall not exceed the following during transportation:

(i) 2 mSv/hr (200 mrem/hr) on the external surface of the package, unless the following conditions are met, in which case the limit is 10 mSv/hr (1,000 mrem/hr):

(I) the shipment is made in a closed transport vehicle;

(II) the package is secured within the vehicle so that its position remains fixed during transportation; and

(III) there are no loading or unloading operations between the beginning and end of the transportation;

(ii) 2 mSv/hr (200 mrem/hr) at any point on the outer surface of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load or enclosure, if used, and on the lower external surface of the vehicle; and

(iii) 0.1 mSv/hr (10 mrem/hr) at any point 2 meters (m) (6.6 feet (ft)) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 m (6.6 ft) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(iv) 0.02 mSv/hr (2 mrem/hr) in any normally occupied space, except that this provision does not apply to private carriers, if exposed personnel under their control wear radiation dosimetry devices in conformance with §289.202(q) of this title;

(C) For shipments made in accordance with the provisions of subparagraph (B) of this paragraph, the shipper shall provide specific written instructions to the carrier for maintenance of the exclusive use shipment controls. The instructions shall be included with the shipping paper information.

(D) The written instructions required for exclusive use shipments shall be sufficient so that, when followed, they will cause the carrier to avoid actions that will unnecessarily delay delivery or unnecessarily result in increased radiation levels or radiation exposures to transport workers or members of the general public.

(11) a package shall be designed, constructed, and prepared for transport so that in still air at 38 degrees Celsius (100 degrees Fahrenheit) and in the shade, no accessible surface of a package would have a temperature exceeding 50 degrees Celsius (122 degrees Fahrenheit) in a nonexclusive use shipment, or 85 degrees Celsius (185 degrees Fahrenheit) in an exclusive use shipment. Accessible package surface temperatures shall not exceed these limits at any time during transportation.

(m) Air transport of plutonium.

(1) Notwithstanding the provisions of any general licenses and notwithstanding any exemptions stated directly in this section or included indirectly by citation of Title 49, CFR, Chapter I, as may be applicable, the licensee shall assure that plutonium in any form, whether for import, export, or domestic shipment, is not transported by air or delivered to a carrier for air transport unless:

(A) the plutonium is contained in a medical device designed for individual human application; or

(B) the plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in Table 257-4 of subsection (ff)(7) of this section, and in which the radioactivity is essentially uniformly distributed; or

(C) the plutonium is shipped in a single package containing no more than an A_2 quantity of plutonium in any isotope or form, and is shipped in accordance with subsection (e) of this section; or

(D) the plutonium is shipped in a package specifically authorized for the shipment of plutonium by air in the Certificate of Compliance for that package issued by the NRC.

(2) Nothing in paragraph (1) of this subsection is to be interpreted as removing or diminishing the requirements of Title 10, CFR, §73.24.

(3) For a shipment of plutonium by air which is subject to paragraph (1) of this subsection, the licensee shall, through special arrangement with the carrier, require compliance with Title 49, CFR, §175.704, DOT regulations applicable to the air transport of plutonium.

(n) Opening instructions. Before delivery of a package to a carrier for transport, the licensee shall ensure that any special instructions needed to safely open the package have been sent to, or otherwise made available to, the consignee for the consignee's use in accordance with §289.202(ee)(5) of this title.

(o) Records. For a period of three years after shipment, each licensee shall maintain, for inspection by the agency, a record of each shipment of radioactive material showing the following where applicable:

(1) identification of the packaging by model number and serial number;

(2) verification that there are no significant defects in the packaging, as shipped;

(3) type and quantity of radioactive material in each package, and the total quantity of each shipment;

(4) date of the shipment;

(5) for fissile packages and for Type B packages, any special controls exercised;

(6) name and address of the transferee;

(7) address to which the shipment was made; and

(8) surveys performed to determine compliance with subsection (l)(9) and (10) of this section.

(p) Reports. The shipper shall immediately report by telephone, telegram, mailgram, or facsimile, all radioactive waste transportation accidents to the agency and the local emergency planning committees in the county where the radioactive waste accident occurs. All other accidents involving radioactive material shall be reported in accordance with §289.202(xx) and (yy) of this title.

(q) Advance notification of transport of irradiated reactor fuel and certain radioactive waste.

(1) As specified in paragraphs (2) - (4) of this subsection, each licensee shall provide advance notification to the governor of a state, or the governor's designee, of the shipment of radioactive waste, through, or across the boundary of the state, before the transport, or delivery to a carrier, for transport, of radioactive waste outside the confines of the licensee's facility or other place of use or storage.

(2) Advance notification is required in accordance with this section for shipment of irradiated reactor fuel in quantities less than that subject to advance notification requirements of Title 10, CFR, §73.37. Advanced notification is also required under this subsection for shipments of radioactive material, other than irradiated fuel, meeting the following three conditions:

(A) the radioactive waste is required by this section to be in Type B packaging for transportation;

(B) the radioactive waste is being transported to or across a state boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(C) the quantity of radioactive waste in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in subsection (ff) of this section for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in subsection (ff) of this section for normal form radioactive material; or

(iii) 1000 terabecquerels (TBq) (27,000 curies (Ci)).

(3) The following are procedures for submitting advance notification:

(A) The notification shall be made in writing to the office of each appropriate governor or governor's designee and to the agency.

(B) A notification delivered by mail shall be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(C) A notification delivered by any other means than mail shall reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of radioactive waste was published in the Federal Register on June 30, 1995 (60 FR 34306).

(ii) The list will be published annually in the Federal Register on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

(D) The licensee shall retain a copy of the notification as a record for three years.

(4) Each advance notification of shipment of irradiated reactor fuel or radioactive waste shall contain the following information:

(A) the name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or radioactive waste shipment;

(B) a description of the irradiated reactor fuel or radioactive waste contained in the shipment, as specified in the regulations of DOT in Title 49, CFR, §172.202 and §172.203(d);

(C) the point of origin of the shipment and the seven-day period during which departure of the shipment is estimated to occur;

(D) the seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(E) the destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(F) a point of contact, with a telephone number, for current shipment information.

(5) A licensee who finds that schedule information previously furnished to a governor or governor's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

(6) The following are procedures for a cancellation notice.

(A) Each licensee who cancels an irradiated reactor fuel or radioactive waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, and to the agency.

(B) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

(r) Emergency plan. Each shipper and transporter of radioactive waste shall adopt an emergency plan approved by the agency for responding to transportation accidents.

(s) Inspections. Each shipment of LLRW to a licensed land disposal facility in Texas shall be inspected by the agency prior to shipment. The waste shipper shall notify the agency no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.

(t) Quality assurance requirements.

(1) Purpose. This subsection describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety.

(A) Quality Assurance comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service.

(B) Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(C) The license, certificate holder, and applicant for a CoC are responsible for the following:

(i) the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging; and

(ii) the quality assurance provision which applies to its use of a packaging for the shipment of licensed material subject to this subpart.

(2) Establishment of program. Each licensee, certificate holder, and applicant for a CoC shall:

(A) Establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of this subsection, subsections (t) and (u) of this section and Title 10, CFR, §§71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging; and

(B) Execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(3) Approval of program. Before the use of any package for the shipment of licensed material subject to this subsection, each licensee shall:

(A) obtain agency approval of its quality assurance program; and

(B) file a description of its quality assurance program, including a discussion of which requirements of this subsection and subsections (u) and (v) are applicable and how they will be satisfied.

(4) Radiography containers. A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of §289.255(m) of this title, is deemed to satisfy the requirements of subsection (i)(1)(B) of this section and paragraph (2) of this subsection.

(u) Quality assurance organization. The licensee, certificate holder, and applicant for a CoC shall:

(1) be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program; and

(2) clearly establish and delineate, in writing, the authority and duties of persons and organizations performing activities affecting the functions of structures, systems, and components that are important to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(3) establish quality assurance functions as follows:

(A) assuring that an appropriate quality assurance program is established and effectively executed; and

(B) verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(4) assure that persons and organizations performing quality assurance functions have sufficient authority and organizational freedom to:

(A) identify quality problems;

(B) initiate, recommend, or provide solutions; and

(C) verify implementation of solutions.

(v) Quality assurance program. A quality assurance program shall be maintained as follows:

(1) The licensee, certificate holder, and applicant for a CoC shall:

(A) establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of this section and Title 10, CFR, §§71.01 through 71.137;

(B) document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used; and

(C) identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(2) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall:

(A) provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material;

(B) assure that activities affecting quality are accomplished under suitable controlled conditions which include:

(i) the use of appropriate equipment;

(ii) suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and

(iii) all prerequisites for the given activity have been satisfied; and

(C) take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(3) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components.

(A) The impact of malfunction or failure of the item to safety;

(B) The design and fabrication complexity or uniqueness of the item;

(C) The need for special controls and surveillance over processes and equipment;

(D) The degree to which functional compliance can be demonstrated by inspection or test; and

(E) The quality history and degree of standardization of the item.

(4) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained.

(5) The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

(w) Quality control program. Each shipper shall adopt a quality control program to include verification of the following to ensure that shipping containers are suitable for shipments to a licensed disposal facility:

(1) identification of appropriate container(s);

(2) container testing documentation is adequate;

(3) appropriate container used;

(4) container packaged appropriately;

(5) container labeled appropriately;

(6) manifest filled out appropriately; and

(7) documentation maintained of each step.

(x) Handling, storage, and shipping control. The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

(y) Inspection, test, and operating status. Measures to track inspection, test and operating status shall be established as follows.

(1) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of the inspections and tests; and

(2) The licensee, shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

(z) Nonconforming materials, parts, or components. The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures must include the following, as appropriate;

(1) procedures for identification, documentation, segregation, disposition, and notification to affected organizations; and

(2) nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

(aa) Corrective action. The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected.

(1) In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition.

(2) The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

(bb) Quality assurance records. The licensee, certificate holder, and applicant for a CoC shall maintain written records sufficient to describe the activities affecting quality for inspection by the agency for 3 years beyond the date when the licensee, certificate holder, and applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for a CoC shall retain the superseded material for 3 years after it is superseded. The records must include the following;

(1) instructions, procedures, and drawings to prescribe quality assurance activities closely related specifications such as required qualifications of personnel, procedures, and equipment.

(2) instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility.

(cc) Audits. The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits, to verify compliance with all aspects of the quality assurance program, and to determine the effectiveness of the program. The audit program shall include:

(1) performance in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the area being audited;

(2) documented results that are reviewed by management having responsibility in the area audited; and

(3) follow-up action, including reaudit of deficient areas, shall be taken where indicated.

(dd) Transfer for disposal and manifests.

(1) The requirements of this section and subsection (gg) of this section are designed to:

(A) control transfers of LLRW by any waste generator, waste collector, or waste processor licensee, as defined in this section, who ships LLRW either directly, or indirectly through a waste collector or waste processor, to a licensed LLRW land disposal facility, as defined in §289.201(b) of this title;

(B) establish a manifest tracking system; and

(C) supplement existing requirements concerning transfers and recordkeeping for those wastes.

(2) Beginning March 1, 1998, all affected licensees shall use subsection (gg) of this section.

(3) Each shipment of LLRW intended for disposal at a licensed land disposal facility shall be accompanied by a shipment manifest in accordance with subsection (gg)(1) of this section.

(4) Any licensee shipping LLRW intended for ultimate disposal at a licensed land disposal facility shall document the information required on the uniform manifest and transfer this recorded manifest information to the intended consignee in accordance with subsection (gg) of this section.

(5) Each shipment manifest shall include a certification by the waste generator as specified in subsection (gg)(10) of this section, as appropriate.

(6) Each person involved in the transfer for disposal and disposal of LLRW, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in subsection (gg) of this section, as appropriate.

(7) Any licensee shipping LLRW to a licensed Texas LLRW disposal facility shall comply with the waste acceptance criteria in 30 Texas Administrative Code (TAC) Part 1, Chapter 336.

(ee) Fees.

(1) Each shipper shall be assessed a fee for shipments of LLRW originating in Texas or originating out-of-state being shipped to a licensed Texas LLRW disposal facility and these fees shall be:

(A) $10 per cubic foot of shipped LLRW;

(B) collected by the compact waste disposal facility and remitted to the TCEQ and deposited to the credit of the radiation and perpetual care account; and

(C) used exclusively by the agency for emergency planning for and response to transportation accidents involving LLRW.

(2) Fee assessments in accordance with this section shall be suspended when the amount of fees collected reaches $500,000, except that if the balance of fees collected is reduced to $350,000 or less, the assessments shall be reinstituted to bring the balance of fees collected to $500,000.

(3) Money expended from the radiation and perpetual care account to respond to accidents involving LLRW shall be reimbursed to the radiation and perpetual care account by the responsible shipper or transporter according to rules adopted by the board.

(ff) Appendices for determination of A_1 and A_2.

(1) Values of A_1 and A_2. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in these rules are given in Table 257-3 of paragraph (6) of this subsection. The curie (Ci) values specified are obtained by converting from the terabecquerel (TBq) figure. The Terabecquerel values are the regulatory standard. The curie values are for information only and are not intended to be the regulatory standard. Where values of A_1 or A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

(2) Values of radionuclides not listed.

(A) For individual radionuclides whose identities are known, but are not listed in Table 257-3 of paragraph (6) of this subsection, the A_1 and A_2 values contained in Table 257-5 of paragraph (8) of this subsection may be used. Otherwise, the licensee shall obtain prior NRC approval of the A_1 and A_2 values for radionuclides not listed in Table 257-3 of paragraph (6) of this subsection, before shipping the material.

(B) For individual radionuclides whose identities are known, but that are not listed in Table 257-4 of paragraph (7) of this subsection, the exempt material activity concentration and exempt consignment activity values contained in Table 257-5 of paragraph (8) of this subsection may be used. Otherwise, the licensee shall obtain prior approval of the exempt material activity concentration and exempt consignment activity values, for radionuclides not listed in Table 257-3 of paragraph (6) of this subsection, before shipping the material.

(C) The licensee shall submit requests for prior approval, described in subparagraphs (A) and (B) of this paragraph to the agency.

(3) Calculations of A_1 and A_2 for a radionuclide not in Table 257-3 of paragraph (6) of this subsection. In the calculations of A_1 and A_2 for a radionuclide not in Table 257-3 of paragraph (6) of this subsection, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter radionuclide has a half-life either longer than ten days, or longer than that of the parent radionuclide, shall be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied shall be those corresponding to the parent radionuclide of that chain. In the case of radioactive decay chains in which any daughter radionuclide has a half-life either longer than ten days, or greater than that of the parent radionuclide, the parent and those daughter radionuclides shall be considered as mixtures of different radionuclides.

(4) Determination for mixtures of radionuclides whose identities and respective activities are known. For mixtures of ra-

dionuclides whose identities and respective activities are known, the following conditions apply.

(A) For special form radioactive material, the maximum quantity transported in a Type A package is as follows:
Figure: 25 TAC §289.257(ff)(4)(A)

(B) For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:
Figure: 25 TAC §289.257(ff)(4)(B)

(C) Alternatively, an A_1 value for mixtures of special form material may be determined as follows:
Figure: 25 TAC §289.257(ff)(4)(C)

(D) An A_2 value for mixtures of normal form material may be determined as follows:
Figure: 25 TAC §289.257(ff)(4)(D)

(E) The exempt activity concentration for mixtures of nuclides may be determined as follows:
Figure: 25 TAC §289.257(ff)(4)(E)

(F) The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:
Figure: 25 TAC §289.257(ff)(4)(F)

(5) Determination when activities of some of the radionuclides are not known. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph (4) of this subsection. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

(6) A_1 and A_2 values for radionuclides. The following Table 257-3 contains A_1 an A_2 values for radionuclides:
Figure: 25 TAC §289.257(ff)(6)

(7) Exempt material activity concentrations and exempt consignment activity limits for radionuclides. The following Table 257-4 contains exempt material activity concentrations and exempt consignment activity limits for radionuclides:
Figure: 25 TAC §289.257(ff)(7)

(8) General values for A_1 and A_2. The following Table 257-5 contains general values for A_1 and A_2:
Figure: 25 TAC §289.257(ff)(8)

(9) Activity-mass relationships for uranium. The following Table 257-6 contains activity-mass relationships for uranium:
Figure: 25 TAC §289.257(ff)(9)

(gg) Appendices for the requirements for transfers of LLRW intended for disposal at licensed land disposal facilities and manifests.

(1) Manifest. A waste generator, collector, or processor who transports, or offers for transportation, LLRW intended for ultimate disposal at a licensed LLRW land disposal facility shall prepare a manifest reflecting information requested on applicable BRC Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable BRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)) or their equivalent. BRC Forms 540 and 540A shall be completed and shall physically accompany the pertinent LLRW shipment. Upon agreement between shipper and consignee, BRC Forms 541, 541A and 541B, and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by the agency to comply with the manifesting requirements of this section when they ship:

(A) LLRW for processing and expect its return (i.e., for storage in accordance with their license) prior to disposal at a licensed land disposal facility;

(B) LLRW that is being returned to the licensee who is the waste generator or generator, as defined in this section; or

(C) radioactively contaminated material to a waste processor that becomes the processor's residual waste.

(2) Form instructions. For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this subsection may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

(3) Forms. BRC Forms 540, 540A, 541, 541A, 541B, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained from the agency.

(4) Information requirements of the DOT. This subsection includes information requirements of the DOT, as codified in Title 49, CFR, Part 172. Information on hazardous, medical, or other waste, required to meet EPA regulations, as codified in Title 40, CFR, Parts 259 and 261 or elsewhere, is not addressed in this section, and shall be provided on the required EPA forms. However, the required EPA forms shall accompany the uniform manifest required by this section.

(5) General information. The shipper of the LLRW, shall provide the following information on the uniform manifest:

(A) the name, facility address, and telephone number of the licensee shipping the waste;

(B) an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

(C) the name, address, and telephone number, or the name and EPA identification number for the carrier transporting the waste.

(6) Shipment information. The shipper of the LLRW shall provide the following information regarding the waste shipment on the uniform manifest:

(A) the date of the waste shipment;

(B) the total number of packages/disposal containers;

(C) the total disposal volume and disposal weight in the shipment;

(D) the total radionuclide activity in the shipment;

(E) the activity of each of the radionuclides hydrogren-3, carbon-14, technetium-99, iodine-129, radium-226 contained in the shipment; and

(F) the total masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

(7) Disposal container and waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(A) an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(B) a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(C) the volume displaced by the disposal container;

(D) the gross weight of the disposal container, including the waste;

(E) for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(F) a physical and chemical description of the waste;

(G) the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(H) the approximate volume of waste within a container;

(I) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(J) the identities and activities of individual radionuclides contained in each container, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(K) the total radioactivity within each container; and

(L) for wastes consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title shall be identified.

(8) Uncontainerized waste information. The shipper of the LLRW shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

(A) the approximate volume and weight of the waste;

(B) a physical and chemical description of the waste;

(C) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;

(D) for waste consigned to a disposal facility, the classification of the waste in accordance with §289.202(ggg)(4)(A) of this title. Waste not meeting the structural stability requirements of §289.202(ggg)(4)(B)(ii) of this title shall be identified;

(E) the identities and activities of individual radionuclides contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

(F) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

(9) Multi-generator disposal container information. This paragraph applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLRW resulting from a processor's activities may be attributable to one or more generators (including waste generators) as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

(A) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

(B) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following:

(i) the volume of waste within the disposal container;

(ii) a physical and chemical description of the waste, including the solidification agent, if any;

(iii) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(iv) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in §289.202(ggg)(4)(B)(ii) of this title; and

(v) radionuclide identities and activities contained in the waste, the masses of uranium-233, uranium-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

(10) Certification. An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the DOT and the agency. A collector in signing the certification is certifying that nothing has been done to the collected waste that would invalidate the waste generator's certification.

(11) Control and tracking.

(A) Any licensee who transfers LLRW to a land disposal facility or a licensed waste collector shall comply with the requirements in clauses (i) - (ix) of this subparagraph. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of clauses (iv) - (ix) of this subparagraph. A licensee shall:

(i) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristic requirements in §289.202(ggg)(4)(B) of this title;

(ii) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, in accordance with §289.202(ggg)(4)(A) of this title;

(iii) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(iv) prepare the uniform manifest as required by this subsection;

(v) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the manifest precedes the LLRW shipment; and

(II) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclauses (I) and (II) of this clause are also acceptable;

(vi) include the uniform manifest with the shipment regardless of the option chosen in clause (v) of this subparagraph;

(vii) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(viii) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title; and

(ix) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this subsection, conduct an investigation in accordance with subparagraph (D) of this paragraph.

(B) Any waste collector licensee who handles only prepackaged waste shall:

(i) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(ii) prepare a new uniform manifest to reflect consolidated shipments that meet the requirements of this subsection. The waste collector shall ensure that, for each container of waste in the shipment, the uniform manifest identifies the generator of that container of waste;

(iii) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the uniform manifest precedes the LLRW shipment; or

(II) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclauses (I) and (II) of this clause are also acceptable;

(iv) include the uniform manifest with the shipment regardless of the option chosen in clause (iii) of this subparagraph;

(v) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(vi) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title;

(vii) for any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in accordance with this clause, conduct an investigation in accordance with subparagraph (D) of this paragraph; and

(viii) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(C) Any licensed waste processor who treats or repackages waste shall:

(i) acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of the uniform manifest;

(ii) prepare a new uniform manifest that meets the requirements of this subsection. Preparation of the new uniform manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in clause (i) of this subparagraph;

(iii) prepare all wastes so that the waste is classified according to §289.202(ggg)(4)(A) of this title and meets the waste characteristics requirements in §289.202(ggg)(4)(B) of this title;

(iv) label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §289.202(ggg)(4)(A) and (C) of this title;

(v) conduct a quality assurance program to assure compliance with §289.202(ggg)(4)(A) and (B) of this title;

(vi) forward a copy or electronically transfer the uniform manifest to the intended consignee so that either:

(I) receipt of the uniform manifest precedes the LLRW shipment; or

(II) the uniform manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both subclause (I) of this clause and this subclause is also acceptable;

(vii) include the uniform manifest with the shipment regardless of the option chosen in clause (vi) of this subparagraph;

(viii) receive acknowledgement of the receipt of the shipment in the form of a signed copy of the uniform manifest;

(ix) retain a copy of or electronically store the uniform manifest and documentation of acknowledgement of receipt as the record of transfer of radioactive material as required by §289.251 of this title, §289.252 of this title, and §289.254 of this title;

(x) for any shipment or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in accordance with this clause, conduct an investigation in accordance with clause (v) of this subparagraph; and

(xi) notify the shipper and the agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance uniform manifest, unless notified by the shipper that the shipment has been cancelled.

(D) Any shipment or part of a shipment for which acknowledgement is not received within the times set forth in accordance with this section shall undergo the following:

(i) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(ii) be traced and reported. The investigation shall include tracing the shipment and filing a report with the agency. Each licensee who conducts a trace investigation shall file a written report with the agency within two weeks of completion of the investigation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §289.202, concerning standards for protection against radiation from radioactive materials, and the repeal of §289.255 and new §289.255, concerning radiation safety requirements and licensing and registration procedures for industrial radiography. The amendment to §289.202 is adopted with changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3115). The repeal of §289.255 and new §289.255 are adopted without changes, and therefore, the sections will not be republished. The proposed repeal of §289.256 and new §289.256 were published in the same issue of the *Texas Register* and are withdrawn from adoption.

BACKGROUND AND PURPOSE

The amendments to §289.202 added a definition of "nationally tracked source" and added requirements regarding the national radioactive source tracking system for certain sealed sources that are items of immediate mandatory compatibility with the United States Nuclear Regulatory Commission (NRC) and, as an agreement state with the NRC, Texas must adopt them. Another amendment also added a new section regarding optional dose limits for individual members of the public which is also an item of immediate mandatory compatibility.

The repeal of §289.255 and new §289.255 are necessary to modify radiation safety requirements and licensing and registration procedures for industrial radiography. Most of these requirements are items of compatibility with the NRC and, as an agreement state with the NRC, Texas must adopt them. In addition, the industrial radiography examination and certification fees are increased to recover 100 percent of current program costs. Several revisions were made to clarify existing requirements in the rule.

The repeal of §289.256 and new §289.256 concern the training and education requirements for users of radioactive material for medical purposes. These include physicians, medical physicists, nuclear pharmacists, and radiation safety officers. As a result of opposition to the rules by the Texas Radiation Advisory Board (TRAB), the department has decided to withdraw the rules pending further discussions between TRAB and the NRC. The current §289.256 will remain in effect.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.202 and 289.255 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The revisions to §289.202 are necessary because these requirements are items of immediate mandatory compatibility with the NRC and Texas must adopt them. Section §289.202(c) adds a definition of "nationally tracked source" and renumbers subsequent definitions. Section 289.202(n) was amended to revise requirements regarding optional dose limits for individual members of the public. New §289.202(hhh) adds requirements for reports of transactions involving nationally tracked sources; provides the nationally tracked source thresholds; and incorporates the requirements for source manufacturers to assign a unique serial number to each nationally tracked source.

Concerning §289.255, throughout the rule, reference to §289.231 relating to general provisions and standards for protection against machine-produced radiation is added to the specific parts of the rule that apply to industrial radiographic operations using machine-produced radiation.

In §289.255(b), the new rule addresses, in separate paragraphs, those sections that apply respectively to industrial radiographic operations using radioactive material and operations using machine-produced radiation. In addition, §289.255(b) includes reference to §289.228 relating to radiation safety requirements for analytical and other industrial radiation machines and §289.229 relating to radiation safety requirements for accelerators, therapeutic radiation machines, and simulators, to state the complete list of rules and requirements that apply to all industrial radiographic operations using machine-produced radiation.

Several definitions are revised in §289.255(c) to be compatible with NRC and the definition of "Conference of Radiation Control Program Directors, Inc. (CRCPD)" is added to define this term that is used in the rule text. The definition of "enclosed radiography" is deleted, as this term is included in the term "shielded room radiography." As a result of deleting the definition of "enclosed radiography," this term has been replaced with "shielded room" throughout the section to state the correct term. Section 289.255(d) includes language to clarify certain industrial radiographic operations that are exempt from this section.

The requirements for qualifications of radiographic personnel in §289.255(e) have been reformatted and renumbered for clarification of these requirements. Concerning §289.255(e)(1)(B), the number of days that a radiographer trainee may carry the copy of the completed BRC Form 255-E before receiving a trainee status card is changed from 60 days to 30 days because the agency has determined that the trainee status card is issued within 30 days after documentation has been submitted. In §289.255(f)(2), a statement is added to the additional radiographer and radiographer trainer requirements to clearly state that these individuals are responsible for ensuring that radiographic operations are conducted in accordance with the requirements of this section.

In §289.255(g)(1)(B), the industrial radiographer examination is now non-transferable as well as non-refundable in order to increase the efficiency of scheduling examinations. In addition, this subparagraph increases the examination fee from $25 to $120 to recover 100 percent of current program costs. A new subparagraph is added to §289.255(g)(1) to clarify that applicants who fail to appear at a scheduled exam and do not reschedule 48 hours prior to their assigned exam session must reapply for a future exam session in an effort to decrease the relatively large number of applicants who fail to appear at a scheduled exam session and to increase the efficiency of scheduling exams. Section 289.255(g)(2)(F) adds the words "government-issued" in front of the words "photo identification

card" to specify the type of photo identification that is acceptable to the department.

Section 289.255(h)(1)(A) increases the radiographer certification fee from $100 to $110 to recover 100 percent of current program costs. In addition, in §289.255(h)(4)(C), language is added to clarify that an individual whose radiographer certification has been suspended or revoked must comply with the conditions of the suspension or revocation orders before certification is reinstated, or the individual is permitted by the department to apply for a new certification. In §289.255(l)(1)(A), the words "make, model, and" are added in front of the words "serial number" because this revision is an item of compatibility with the NRC and Texas must adopt this. In §289.255(n)(1), the term "or" is replaced with the term "and" following the words "conspicuous visible" to clarify that both a conspicuous visible and audible alarm signal shall exist at permanent radiographic installations.

The term "personnel monitoring control" is changed to "individual monitoring" in §289.255(p) to be consistent with language used throughout this chapter. The word "operable" is added in front of the word "alarming" in §289.255(p)(2)(A)(iii) and the words "and the possibility of radiation exposure cannot be ruled out as the cause," are added to §289.255(p)(2)(G) for clarification and because these requirements are items of compatibility with the NRC.

Section 289.255(q)(1) adds the word "continuous" in front of the word "visual" to clarify that radiographic personnel shall maintain continuous visual surveillance of the operation and to maintain rules compatible with the NRC.

Section §289.255(t)(4)(B) replaces "where the main business office is located" with "of an authorized use site listed on the certificate of registration" to clarify the location that must be prominently displayed on both sides of all vehicles used to transport radiation machines for temporary job site use. The requirements for radiation machines in shielded rooms and the requirements for certified and certifiable cabinet x-ray systems have been reformatted and renumbered in §289.255(t)(7) and (8) for clarification of these requirements.

Several revisions are made to §289.255(u)(1) concerning licensing requirements for industrial radiographic operations. The requirements are items of compatibility with the NRC and as an agreement state, Texas is required to adopt them. These revisions include addition of new language to §289.255(u)(1)(B)(x) concerning performance of leak testing of sealed sources or exposure devices containing depleted uranium shielding and addition of new language to §289.255(u)(2)(B)(xii) concerning performance of in-house calibrations of survey instruments. In addition these revisions add new language to the following: §289.255(u)(3) concerning locking of radiographic exposure devices, storage containers and source changers; §289.255(u)(5)(C)(ii) concerning modification of radiographic exposure devices, source changers, source assemblies, and associated equipment; and §289.255(u)(5)(D)(vii) concerning kinking and crushing tests for guide tubes. Section §289.255(u)(7)(D) replaces "where the main business office is located" with "of an authorized use site listed on the license" to clarify the location that must be prominently displayed on both sides of all vehicles used to transport radioactive material for temporary job site use.

In §289.255(v)(1), the record keeping time requirements change from two years to three years for the following records because these requirements are items of compatibility with the NRC: survey instrument calibrations; quarterly inventory; utilization logs; inspection and maintenance; permanent radiographic installation tests; direct-reading pocket or electronic personal dosimeter readings; pocket dosimeter calibrations and yearly response checks; alarming ratemeter calibrations; internal audit program; annual refresher training; radiation surveys; leak tests; annual evaluation of enclosed sealed source systems; and test of sealed source interlocks. In addition, the department changes the record keeping time requirements in §289.255(v)(1) from two years to three years for the following records, to be consistent with other record keeping time requirements stated throughout the section: annual evaluation of enclosed x-ray systems; operating instructions in cabinet x-ray systems; tests of x-ray interlocks; and evaluation of certified cabinet x-ray systems.

The requirement that records of individual monitoring records be maintained at additional authorized use/storage sites is added to the list in §289.255(v)(2)(A)(xx) to state the complete list of records required at these sites. In addition, §289.255(v)(2)(A)(xix) and (3)(H) add the words "NRC license," in front of the words "agreement state license" and adds the word "state" in front of the word "certificate" to clarify the types of out-of-state licensees and registrants that may work in Texas under reciprocity.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenters were Baker Atlas, Industrial Hygiene, Radiation Technology Inc, and the NRC. The commenters were in favor of the rules; however, two of the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §289.202(c)(21), one of the commenters stated that the company understands that adding the definition and reporting requirements for Nationally Tracked Sources is a compatibility issue, and that the wording is practically identical to that in Title 10, Code of Federal Regulations (CFR), §20.2207; however, the commenter expressed a concern as to how many Texas licensees will understand the intent. Furthermore, the commenter added that since this is basically an NRC requirement, and reporting is to the NRC, it would seem to be an appropriate topic to be covered at the Radiation Control Conference to be held in September.

Response: The commission disagrees because department staff are available to clarify the intent of radiation rules, policies, and procedures via telephone, mail, facsimile, web mail, and in person during on-site inspections. The department has forwarded the suggested meeting topic request to the Health Physics Society for consideration. No change was made to the rule as a result of the comment.

Comment: Concerning §289.202(n), the NRC indicated that Texas needs to add requirements equivalent to Title 10, CFR, §20.1301, regarding optional dose limits for individual members of the public, to meet the mandatory Compatibility Category A designation assigned to Title 10, CFR, §20.1301.

Response: Although subsection (n) was proposed as "no change," based on the comment received from the NRC, the commission has determined that a change is needed and has incorporated language equivalent to Title 10, CFR, §20.1301, as suggested. In addition, the commission has determined that this requirement imposes no new duties on authorized users,

or anyone else, but simply allows an authorized user to provide a member of the public with a new option for visiting a patient. The change is reflected in amended §289.202(n)(1)(A) and (B), and new §289.202(n)(6).

Comment: Concerning §289.202(hhh), one of the commenters recalls when each license had sources, regardless of size, listed by manufacturer, model and serial number. In addition, the commenter expressed that this was a much better way to keep track of everything than what is being proposed.

Response: The commission disagrees because this requirement is an item of immediate mandatory compatibility with the NRC and, as an agreement state with the NRC, Texas must adopt this. No change was made to the rule as a result of the comment.

Comment: Concerning §289.202(hhh)(1)(B), one commenter clarified that sources are dispatched with authorized users (licensee) to temporary jobsites which are covered by license condition. The commenter stated that the source would still be under the jurisdiction of the license and in the possession of the authorized user (licensee). A report to the National Source Tracking Reporting System would not be required since the source is still in the possession of the authorized user (licensee). The commenter added that this exemption from reporting would reduce the amount of reports submitted to the system. The individual stated that other mechanisms are in place that currently track source use at temporary jobsites. Therefore, the commenter proposed that the rule exclude reporting to the National Source Tracking Database for transfers to temporary jobsites for material that remains in the possession of the original licensee.

Response: Although this reporting requirement is an item of immediate mandatory compatibility with the NRC and, as an agreement state with the NRC, Texas must adopt this, the commission agrees and added language to §289.202(hhh)(1)(B) to clarify that a source transfer transaction does not include transfers to a temporary domestic job site and therefore, domestic transactions in which the nationally tracked source remains in the possession of the licensee, do not require a report to the National Source Tracking System. This requirement is clarified in the statements of consideration published in the November 8, 2006 *Federal Register* (65690 *Federal Register*/Vol. 71, No. 216).

Comment: Concerning §289.202(hhh)(2), one commenter stated that Texas needs to correct the nationally tracked sources threshold value for the Category 2 limit for Promethium-147 from "11,100 Ci" to "11,000 Ci" in order to meet the Compatibility Category B designation assigned to Title 10, CFR, Part 20, Appendix E.

Response: The commission agrees and corrected the nationally tracked sources threshold value for the Category 2 limit for Promethium-147 as suggested. The change is reflected in the table of the figure referenced for §289.202(hhh)(2).

Comment: Concerning the proposed repeal of §289.256 and new §289.256, the Texas Radiation Advisory Board (TRAB) has opposed adoption of these rules pending further discussions with the NRC to resolve TRAB's concerns.

Response: The commission agrees and that the current version of §289.256, which is at least equal to and, in some provisions, more stringent than the proposed version is protective of public health and safety so that the proposed repeal of §289.256 and new §289.256 will not be adopted at this time.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER D. GENERAL

25 TAC §289.202

STATUTORY AUTHORITY

The amendment is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§289.202. Standards for Protection Against Radiation from Radioactive Materials.

(a) Purpose.

(1) This section establishes standards for protection against ionizing radiation resulting from activities conducted in accordance with licenses issued by the agency.

(2) The requirements in this section are designed to control the receipt, possession, use, and transfer of sources of radiation by any licensee so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this section. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(b) Scope.

(1) Except as specifically provided in other sections of this chapter, this section applies to persons who receive, possess, use, or transfer sources of radiation, unless otherwise exempted. No person may use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of sources of radiation unless that person has a license or exemption from the agency. The dose limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with this chapter, or to voluntary participation in medical research programs. However, no radiation may be deliberately applied to human beings except by or under the supervision of an individual authorized by and licensed in accordance with Texas' statutes to engage in the healing arts.

(2) Licensees who are also registered by the agency to receive, possess, use, and transfer radiation machines must also comply with the requirements of §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise.

(1) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(2) Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by Reference Man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert (Sv)) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section.

(3) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(4) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(5) Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which apply to a range of clearance half-times: for Class D, Days, of less than 10 days; for Class W, Weeks, from 10 to 100 days, and for Class Y, Years, of greater than 100 days. For purposes of this section, lung class and inhalation class are equivalent terms.

(6) Debris--The remains of something destroyed, disintegrated, or decayed. Debris does not include soils, sludges, liquids, gases, naturally occurring radioactive material regulated in accordance with §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), or low-level radioactive waste received from other persons.

(7) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(8) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(9) Derived air concentration (DAC)--The concentration of a given radionuclide in air that, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of 1 ALI. For purposes of this section, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Column 3 of Table I of subsection (ggg)(2) of this section.

(10) Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 Sv).

(11) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus.

(12) Dosimetry processor--A person that processes and evaluates personnel monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(13) Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(14) Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(15) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(16) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(17) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(18) Inhalation class (see definition for Class).

(19) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(20) Lung class (see definition for Class).

(21) Nationally tracked source--A sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in subsection (hhh)(2) of this section. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(22) Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(23) Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of this section, deterministic effect is an equivalent term.

(24) Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(25) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(26) Powered air-purifying respirator--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(27) Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(28) Qualitative fit test--A pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(29) Quantitative fit test--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(30) Quarter--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(31) Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of Reference Man is contained in the International Commission on Radiological Protection Report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(32) Respiratory protective equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(33) Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(34) Self-contained breathing apparatus--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(35) Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of this section probabilistic effect is an equivalent term.

(36) Supplied-air respirator or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(37) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(38) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(39) Weighting factor w_T for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:
Figure: 25 TAC §289.202(c)(39)

(d) Implementation.

(1) Any existing license condition that is more restrictive than this section remains in force until there is an amendment or renewal of the license that modifies or removes this condition.

(2) If a license condition exempts a licensee from a provision of this section in effect on or before January 1, 1994, it also exempts the licensee from the corresponding provision of this section.

(3) If a license condition cites provisions of this section in effect prior to January 1, 1994, that do not correspond to any provisions of this section, the license condition remains in force until there is an amendment or renewal of the license that modifies or removes this condition.

(e) Radiation protection programs.

(1) Each licensee shall develop, document, and implement a radiation protection program sufficient to ensure compliance with the provisions of this section. See subsection (mm) of this section for recordkeeping requirements relating to these programs. Documentation of the radiation protection program may be incorporated in the licensee's operating, safety, and emergency procedures.

(2) The licensee shall use, to the extent practicable, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

(3) The licensee shall, at intervals not to exceed 12 months, ensure the radiation protection program content and implementation is reviewed. The review shall include a reevaluation of the assessments made to determine monitoring is not required in accordance with subsection (q)(1) and (3) of this section in conjunction with the licensee's current operating conditions.

(4) To implement the ALARA requirement in paragraph (2) of this subsection and notwithstanding the requirements in subsection (n) of this section, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, shall be established by licensees such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 millirems (mrem) (0.1 mSv) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as required in subsection (yy) of this section and promptly take appropriate corrective action.

(5) If monitoring is not required in accordance with subsection (q)(1) and (3) of this section, the licensee shall document assessments made to determine the requirements of subsection (q)(1) and (3) of this section are not applicable. The licensee shall maintain the documentation in accordance with subsection (rr)(5) of this section.

(f) Occupational dose limits for adults.

(1) The licensee shall control the occupational dose to individuals, except for planned special exposures in accordance with subsection (k) of this section, to the following dose limits.

(A) An annual limit shall be the more limiting of:

(i) the total effective dose equivalent being equal to 5 rems (0.05 Sv); or

(ii) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 Sv).

(B) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities shall be:

(i) a lens dose equivalent of 15 rems (0.15 Sv); and

(ii) a shallow dose equivalent of 50 rems (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during

the individual's lifetime. See subsection (k)(6)(A) and (B) of this section.

(3) The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters (cm^2) of skin receiving the highest exposure.

(4) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys, or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(5) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of subsection (ggg)(2) of this section and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See subsection (rr) of this section.

(6) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams (mg) in a week in consideration of chemical toxicity. See footnote 3 of subsection (ggg)(2) of this section.

(7) The licensee shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See subsection (j)(4) of this section.

(g) Compliance with requirements for summation of external and internal doses.

(1) If the licensee is required to monitor in accordance with both subsection (q)(1) and (3) of this section, the licensee shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee is required to monitor only in accordance with subsection (q)(1) of this section or only in accordance with subsection (q)(3) of this section, then summation is not required to demonstrate compliance with the dose limits. The licensee may demonstrate compliance with the requirements for summation of external and internal doses in accordance with paragraphs (2) - (4) of this subsection. The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(2) If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

(A) the sum of the fractions of the inhalation ALI for each radionuclide; or

(B) the total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000; or

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T, and the committed dose equivalent, $H_{T,50}$, per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$, that is, $w_T H_{T,50}$, per unit intake for any organ or tissue.

(3) If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than 10% of the applicable oral ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits.

(4) The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for in accordance with this paragraph.

(h) Determination of external dose from airborne radioactive material.

(1) Licensees shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, eye dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See footnotes 1 and 2 of subsection (ggg)(2) of this section.

(2) Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

(i) Determination of internal exposure.

(1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required in accordance with subsection (q) of this section, take suitable and timely measurements of:

(A) concentrations of radioactive materials in air in work areas;

(B) quantities of radionuclides in the body;

(C) quantities of radionuclides excreted from the body; or

(D) combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in subsection (x) of this section, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee may:

(A) use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record;

(B) upon prior approval of the agency, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(C) separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See subsection (ggg)(2) of this section.

(4) If the licensee chooses to assess intakes of Class Y material using the measurements given in paragraph (1)(A) or (B) of this subsection, the licensee may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required

by subsections (xx) or (yy) of this section. This delay permits the licensee to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(A) the sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from subsection (ggg)(2) of this section for each radionuclide in the mixture; or

(B) the ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

(A) the licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in subsection (f) of this section and in complying with the monitoring requirements in subsection (q)(3) of this section;

(B) the concentration of any radionuclide disregarded is less than 10% of its DAC; and

(C) the sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30%.

(8) When determining the committed effective dose equivalent, the following information may be considered.

(A) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of 1 ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 Sv) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(B) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 50 rems (0.5 Sv), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 Sv), that is, the stochastic ALI, is listed in parentheses in Table I of subsection (ggg)(2) of this section. The licensee may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALI, the licensee shall also demonstrate that the limit in subsection (f)(1)(A)(ii) of this section is met.

(j) Determination of occupational dose for the current year.

(1) For each individual who is likely to receive, in a year, an occupational dose requiring monitoring in accordance with subsection (q) of this section, the licensee shall determine the occupational radiation dose received during the current year.

(2) In complying with the requirements of paragraph (1) of this subsection, a licensee may:

(A) accept, as a record of the occupational dose that the individual received during the current year, BRC Form 202-2 from prior or other current employers, or other clear and legible record, of all information required on that form and indicating any periods of time for which data are not available; or

(B) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's prior or other current employer(s) for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; or

(C) obtain reports of the individual's dose equivalent from prior or other current employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, telegram, facsimile, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(3) The licensee shall record the exposure data for the current year, as required by paragraph (1) of this subsection, on BRC Form 202-3, or other clear and legible record, of all the information required on that form.

(4) If the licensee is unable to obtain a complete record of an individual's current occupational dose while employed by any other licensee, the licensee shall assume in establishing administrative controls in accordance with subsection (f)(8) of this section for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts (mSv)) for each quarter; or 416 mrem (4.16 mSv) for each month for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure.

(5) If an individual has incomplete (e.g., a lost or damaged personnel monitoring device) current occupational dose data for the current year and that individual is employed solely by the licensee during the current year, the licensee shall:

(A) assume that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 mSv) for each quarter;

(B) assume that the allowable dose limit for the individual is reduced by 416 mrem (4.16 mSv) for each month; or

(C) assess an occupational dose for the individual during the period of missing data using surveys, radiation measurements, or other comparable data for the purpose of demonstrating compliance with the occupational dose limits.

(6) Administrative controls established in accordance with paragraph (4) of this subsection shall be documented and maintained for inspection by the agency. Occupational dose assessments made in accordance with paragraph (5) of this subsection and records of data used to make the assessment shall be maintained for inspection by the agency. The licensee shall retain the records in accordance with subsection (rr) of this section.

(k) Planned special exposures. A licensee may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in subsection (f) of this section provided that each of the following conditions is satisfied.

(1) The licensee authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the doses estimated to result from the planned special exposure are unavailable or impractical.

(2) The licensee and employer, if the employer is not the licensee, specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(3) Before a planned special exposure, the licensee ensures that each individual involved is:

(A) informed of the purpose of the planned operation;

(B) informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

(C) instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present.

(4) Prior to permitting an individual to participate in a planned special exposure, the licensee shall determine:

(A) the internal and external doses from all previous planned special exposures;

(B) all doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual; and

(C) all lifetime cumulative occupational radiation doses.

(5) In complying with the requirements of paragraph (4)(C) of this subsection, a licensee may:

(A) accept, as the record of lifetime cumulative radiation dose, an up-to-date BRC Form 202-2 or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee; and

(B) obtain reports of the individual's dose equivalent from prior employer(s) for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee, by telephone, telegram, facsimile, or letter. The licensee shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

(6) Subject to subsection (f)(2) of this section, the licensee shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

(A) the numerical values of any of the dose limits in subsection (f)(1) of this section in any year; and

(B) five times the annual dose limits in subsection (f)(1) of this section during the individual's lifetime.

(7) The licensee maintains records of the conduct of a planned special exposure in accordance with subsection (qq) of this section and submits a written report to the agency in accordance with subsection (zz) of this section.

(8) The licensee records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure. The dose from planned special exposures shall not be considered in controlling future occupational dose of the individual in accordance with subsection (f)(1) of this section but shall be included in evaluations required by paragraphs (4) and (6) of this subsection.

(9) The licensee shall record the exposure history, as required by paragraph (4) of this subsection, on BRC Form 202-2, or other clear and legible record, of all the information required on that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee obtains reports, the licensee shall use the dose shown in the report in preparing BRC Form 202-2 or equivalent.

(l) Occupational dose limits for minors. The annual occupational dose limits for minors are 10% of the annual occupational dose limits specified for adult workers in subsection (f) of this section.

(m) Dose equivalent to an embryo/fetus.

(1) If a woman declares her pregnancy, the licensee shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subsection (f)(1) of this section are applicable to the woman. See subsection (rr) of this section for recordkeeping requirements.

(2) The licensee shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in paragraph (1) of this subsection. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

(3) The dose equivalent to an embryo/fetus shall be taken as:

(A) the dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

(B) the dose equivalent that is most representative of the dose equivalent to the embryo/fetus from external radiation, that is, in the mother's lower torso region.

(i) If multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose equivalent to the embryo/fetus.

(ii) If multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device that is most representative of the dose equivalent to the embryo/fetus shall be the dose equivalent to the embryo/fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose equivalent is also the most representative deep dose equivalent for the region of the embryo/fetus.

(4) If by the time the woman declares pregnancy to the licensee, the dose equivalent to the embryo/fetus has exceeded 0.45 rem (4.5 mSv), the licensee shall be deemed to be in compliance with paragraph (1) of this subsection, if the additional dose equivalent to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

(n) Dose limits for individual members of the public.

(1) Each licensee shall conduct operations so that:

(A) The total effective dose equivalent to individual members of the public from the licensed and/or registered operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material), from voluntary participation in medical research programs, and from the licensee's disposal of radioactive material into sanitary sewerage in accordance with subsection (gg) of this section; and

(B) the dose in any unrestricted area from licensed and/or registered external sources, exclusive of the dose contributions from patients administered radioactive material and released in accor-

dance with §289.256 of this title, does not exceed 0.002 rem (0.02 mSv) in any one hour.

(2) If the licensee permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

(3) A licensee or an applicant for a license may apply for prior agency authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv). This application shall include the following information:

(A) demonstration of the need for and the expected duration of operations in excess of the limit in paragraph (1) of this subsection;

(B) the licensee's program to assess and control dose within the 0.5 rem (5 mSv) annual limit; and

(C) the procedures to be followed to maintain the dose ALARA.

(4) In addition to the requirements of this section, a licensee subject to the provisions of the United States Environmental Protection Agency's (EPA) generally applicable environmental radiation standards in 40 Code of Federal Regulations (CFR), §190 shall comply with those requirements.

(5) The agency may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee may release in effluents in order to restrict the collective dose.

(6) Notwithstanding paragraph (1)(A) of this subsection, a licensee may permit visitors to an individual who cannot be released, in accordance with §289.256 of this title, to receive a radiation dose greater than 0.1 rem (1 mSv) if:

(A) the radiation dose received does not exceed 0.5 rem (5 mSv); and

(B) the authorized user, as defined in §289.256 of this title, has determined before the visit that it is appropriate.

(o) Compliance with dose limits for individual members of the public.

(1) The licensee shall make or cause to be made surveys of radiation levels in unrestricted areas and radioactive materials in effluents released to unrestricted areas to demonstrate compliance with the dose limits for individual members of the public as required in subsection (n) of this section.

(2) A licensee shall show compliance with the annual dose limit in subsection (n) of this section by:

(A) demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(B) demonstrating that:

(i) the annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in Table II of subsection (ggg)(2) of this section; and

(ii) if an individual were continuously present in an unrestricted area, the dose from external sources of radiation would not exceed 0.002 rem (0.02 mSv) in an hour and 0.05 rem (0.5 mSv) in a year.

(3) Upon approval from the agency, the licensee may adjust the effluent concentration values in Table II, of subsection (ggg)(2) of this section, for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium, and chemical form.

(p) General surveys and monitoring.

(1) Each licensee shall make, or cause to be made, surveys that:

(A) are necessary for the licensee to comply with this section; and

(B) are necessary under the circumstances to evaluate:

(i) the magnitude and extent of radiation levels;

(ii) concentrations or quantities of radioactive material; and

(iii) the potential radiological hazards.

(2) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are operable and calibrated:

(A) by a person licensed or registered by the agency, another agreement state, a licensing state, or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) at intervals not to exceed 12 months unless a different time interval is specified in another section of this chapter;

(C) after each instrument or equipment repair;

(D) for the types of radiation used and at energies appropriate for use; and

(E) at an accuracy within 20% of the true radiation level.

(3) All individual monitoring devices, except for direct and indirect reading pocket dosimeters, electronic personal dosimeters, and those individual monitoring devices used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees to comply with subsection (f) of this section, with other applicable provisions of this chapter, or with conditions specified in a license, shall be processed and evaluated by a dosimetry processor:

(A) holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology;

(B) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

(4) All individual monitoring devices shall be appropriate for the environment in which they are used.

(q) Conditions requiring individual monitoring of external and internal occupational dose. Each licensee shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this section. As a minimum:

(1) each licensee shall monitor occupational exposure to radiation and shall supply and require the use of individual monitoring devices by:

(A) adults likely to receive, in one year from sources external to the body, a dose in excess of 10% of the limits in subsection (f)(1) of this section;

(B) minors likely to receive, in one year from sources of radiation external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv), a lens dose equivalent in excess of 0.15 rem (1.5 mSv), or a shallow dose equivalent to the skin or to the extremities in excess of 0.5 rem (5 mSv);

(C) declared pregnant women likely to receive during the entire pregnancy, from sources of radiation external to the body, a deep dose equivalent in excess of 0.1 rem (1 mSv); and

(D) individuals entering a high or very high radiation area;

(2) notwithstanding paragraph (1)(C) of this subsection, a licensee is exempt from supplying individual monitoring devices to healthcare personnel who may enter a high radiation area while providing patient care if:

(A) the personnel are not likely to receive, in one year from sources external to the body, a dose in excess of 10% of the limits in subsection (f)(1) of this section; and

(B) the licensee complies with the requirements of subsection (e)(2) of this section; and

(3) each licensee shall monitor, to determine compliance with subsection (i) of this section, the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) adults likely to receive, in one year, an intake in excess of 10% of the applicable ALI in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section;

(B) minors likely to receive, in one year, a committed effective dose equivalent in excess of 0.1 rem (1 mSv); and

(C) declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 mSv).

(r) Location and use of individual monitoring devices.

(1) Each licensee shall ensure that individuals who are required to monitor occupational doses in accordance with subsection (q)(l) of this section wear and use individual monitoring devices as follows.

(A) An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar).

(B) If an additional individual monitoring device is used for monitoring the dose to an embryo/fetus of a declared pregnant woman, in accordance with subsection (m)(1) of this section, it shall be located at the waist under any protective apron being worn by the woman.

(C) An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with subsection (f)(1)(B)(i) of this section, shall be located at the neck (collar) or at a location closer to the eye, outside any protective apron being worn by the monitored individual.

(D) An individual monitoring device used for monitoring the dose to the skin of the extremities, to demonstrate compliance with subsection (f)(1)(B)(ii) of this section, shall be worn on the skin of the extremity likely to receive the highest exposure. Each individual monitoring device, to the extent practicable, shall be oriented to measure the highest dose to the skin of the extremity being monitored.

(E) An individual monitoring device shall be assigned to and worn by only one individual.

(F) An individual monitoring device shall be worn for the period of time authorized by the dosimetry processor's certificate of registration or for no longer than three months, whichever is more restrictive.

(2) Each licensee shall ensure that individual monitoring devices are returned to the dosimetry processor for proper processing.

(3) Each licensee shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

(s) Control of access to high radiation areas.

(1) The licensee shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(A) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 mSv) in one hour at 30 centimeters (cm) from the source of radiation from any surface that the radiation penetrates;

(B) a control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(C) entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

(2) In place of the controls required by paragraph (1) of this subsection for a high radiation area, the licensee may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

(3) The licensee may apply to the agency for approval of alternative methods for controlling access to high radiation areas.

(4) The licensee shall establish the controls required by paragraphs (1) and (3) of this subsection in a way that does not prevent individuals from leaving a high radiation area.

(5) The licensee is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the United States Department of Transportation (DOT) provided that:

(A) the packages do not remain in the area longer than three days; and

(B) the dose rate at 1 meter from the external surface of any package does not exceed 0.01 rem (0.1 millisievert) per hour.

(6) The licensee is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to sources of radiation in excess of the established limits in this section and to operate within the ALARA provisions of the licensee's radiation protection program.

(t) Control of access to very high radiation areas. In addition to the requirements in subsection (s) of this section, the licensee shall

institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in one hour at 1 m from a source of radiation or any surface through which the radiation penetrates at this level.

(u) Control of access to very high radiation areas for irradiators.

(1) This subsection applies to licensees with sources of radiation in non-self-shielded irradiators. This subsection does not apply to sources of radiation that are used in teletherapy, in industrial radiography, or in completely self-shielded irradiators in which the source of radiation is both stored and operated within the same shielding radiation barrier and, in the designed configuration of the irradiator, is always physically inaccessible to any individual and cannot create high levels of radiation in an area that is accessible to any individual.

(2) Each area in which there may exist radiation levels in excess of 500 rads (5 grays) in one hour at 1 m from a source of radiation that is used to irradiate materials shall meet the following requirements.

(A) Each entrance or access point shall be equipped with entry control devices that:

(i) function automatically to prevent any individual from inadvertently entering a very high radiation area;

(ii) permit deliberate entry into the area only after a control device is actuated that causes the radiation level within the area, from the source of radiation, to be reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(iii) prevent operation of the source of radiation if it would produce radiation levels in the area that could result in a deep dose equivalent to an individual in excess of 0.1 rem (1 mSv) in one hour.

(B) Additional control devices shall be provided so that, upon failure of the entry control devices to function as required by subparagraph (A) of this paragraph:

(i) the radiation level within the area, from the source of radiation, is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(ii) conspicuous visible and audible alarm signals are generated to make an individual attempting to enter the area aware of the hazard and at least one other authorized individual, who is physically present, familiar with the activity, and prepared to render or summon assistance, aware of the failure of the entry control devices.

(C) The licensee shall provide control devices so that, upon failure or removal of physical radiation barriers other than the sealed source's shielded storage container:

(i) the radiation level from the source of radiation is reduced below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour; and

(ii) conspicuous visible and audible alarm signals are generated to make potentially affected individuals aware of the hazard and the licensee or at least one other individual, who is familiar with the activity and prepared to render or summon assistance, aware of the failure or removal of the physical barrier.

(D) When the shield for stored sealed sources is a liquid, the licensee shall provide means to monitor the integrity of the shield and to signal, automatically, loss of adequate shielding.

(E) Physical radiation barriers that comprise permanent structural components, such as walls, that have no credible probability of failure or removal in ordinary circumstances, need not meet the requirements of subparagraphs (C) and (D) of this paragraph.

(F) Each area shall be equipped with devices that will automatically generate conspicuous visible and audible alarm signals to alert personnel in the area before the source of radiation can be put into operation and in time for any individual in the area to operate a clearly identified control device, which must be installed in the area and which can prevent the source of radiation from being put into operation.

(G) Each area shall be controlled by use of such administrative procedures and such devices as are necessary to ensure that the area is cleared of personnel prior to each use of the source of radiation.

(H) Each area shall be checked by a radiation measurement to ensure that, prior to the first individual's entry into the area after any use of the source of radiation, the radiation level from the source of radiation in the area is below that at which it would be possible for an individual to receive a deep dose equivalent in excess of 0.1 rem (1 mSv) in one hour.

(I) The entry control devices required in subparagraph (A) of this paragraph shall be tested for proper functioning. See subsection (uu) of this section for recordkeeping requirements.

(i) Testing shall be conducted prior to initial operation with the source of radiation on any day, unless operations were continued uninterrupted from the previous day.

(ii) Testing shall be conducted prior to resumption of operation of the source of radiation after any unintentional interruption.

(iii) The licensee shall submit and adhere to a schedule for periodic tests of the entry control and warning systems.

(J) The licensee shall not conduct operations, other than those necessary to place the source of radiation in safe condition or to effect repairs on controls, unless control devices are functioning properly.

(K) Entry and exit portals that are used in transporting materials to and from the irradiation area, and that are not intended for use by individuals, shall be controlled by such devices and administrative procedures as are necessary to physically protect and warn against inadvertent entry by any individual through these portals. Exit portals for irradiated materials shall be equipped to detect and signal the presence of any loose radioactive material that is carried toward such an exit and automatically to prevent loose radioactive material from being carried out of the area.

(3) Licensees or applicants for licenses for sources of radiation within the purview of paragraph (2) of this subsection that will be used in a variety of positions or in locations, such as open fields or forests, which make it impracticable to comply with certain requirements of paragraph (2) of this subsection, such as those for the automatic control of radiation levels, may apply to the Agency for approval of alternative safety measures. Alternative safety measures shall provide personnel protection at least equivalent to those specified in paragraph (2) of this subsection. At least one of the alternative measures shall include an entry-preventing interlock control based on a measurement of the radiation that ensures the absence of high radiation levels before an individual can gain access to the area where such sources of radiation are used.

(4) The entry control devices required by paragraphs (2) and (3) of this subsection shall be established in such a way that no individual will be prevented from leaving the area.

(v) Use of process or other engineering controls. The licensee shall use, to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

(w) Use of other controls.

(1) When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

(A) control of access;

(B) limitation of exposure times;

(C) use of respiratory protection equipment; or

(D) other controls.

(2) If the licensee performs an ALARA analysis to determine whether respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee shall also consider the impact of respirator use on workers' industrial health and safety.

(x) Use of individual respiratory protection equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes of radioactive material in accordance with subsection (w) of this section, the licensee shall do the following.

(A) Except as provided in subparagraph (B) of this paragraph, the licensee shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health (NIOSH).

(B) If the licensee wishes to use equipment that has not been tested or certified by the NIOSH, or for which there is no schedule for testing or certification, the licensee shall submit an application to the agency for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(C) The licensee shall implement and maintain a respiratory protection program that includes:

(i) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

(ii) surveys and bioassays, as appropriate, to evaluate actual intakes;

(iii) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

(iv) written procedures regarding the following:

(I) monitoring, including air sampling and bioassays;

(II) supervision and training of respirator users;

(III) fit testing;

(IV) respirator selection;

(V) breathing air quality;

(VI) inventory and control;

(VII) storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(VIII) recordkeeping; and

(IX) limitations on periods of respirator use and relief from respirator use;

(v) determination by a physician prior to initial fitting of a face sealing respirator and the first field use of non-face sealing respirators, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit to use the respiratory protection equipment; and

(vi) fit testing, with fit factor > 10 times the APF for negative pressure devices, and a fit factor > 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. Fit testing shall be performed with the facepiece operating in the negative pressure mode.

(D) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(E) The licensee shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide for vision correction, adequate communication, low-temperature work environment, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(F) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual may have difficulty extricating himself or herself. The standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(G) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (Title 29, CFR, §1910.134(i)(1)(ii)(A) through (E). Grade D quality air criteria include:

(i) oxygen content (volume/volume) of 19.5-23.5%;

(ii) hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;

(iii) carbon monoxide (CO) content of 10 parts per million (ppm) or less;

(iv) carbon dioxide content of 1,000 ppm or less; and

(v) lack of noticeable odor.

(H) the licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(I) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

(2) The agency may impose restrictions in addition to those in paragraph (1) of this subsection, subsection (w) of this section, and subsection (ggg)(1) of this section, in order to:

(A) ensure that the respiratory protection program of the licensee is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(B) limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

(3) The licensee shall obtain authorization from the agency before assigning respiratory protection factors in excess of those specified in subsection (ggg)(1) of this section. The agency may authorize a licensee to use higher protection factors on receipt of an application that:

(A) describes the situation for which a need exists for higher protection factors; and

(B) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

(y) Security and control of licensed sources of radiation.

(1) The licensee shall secure radioactive material from unauthorized removal or access.

(2) The licensee shall maintain constant surveillance, using devices and/or administrative procedures to prevent unauthorized access to use of radioactive material that is in an unrestricted area and that is not in storage.

(z) Caution signs.

(1) Unless otherwise authorized by the agency, the standard radiation symbol prescribed shall use the colors magenta, or purple, or black on yellow background. The standard radiation symbol prescribed is the three-bladed design as follows:
Figure: 25 TAC §289.202(z)(1) (No change.)

(A) the cross-hatched area of the symbol is to be magenta, or purple, or black; and

(B) the background of the symbol is to be yellow.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, licensees are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(aa) Posting requirements.

(1) The licensee shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(2) The licensee shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(3) The licensee shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA." If the very high radiation area involves medical treatment of patients, the licensee may omit the word "GRAVE" from the sign or signs.

(4) The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(5) The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding 10 times the quantity of such material specified in subsection (ggg)(3) of this section with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

(bb) Exceptions to posting requirements.

(1) A licensee is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours, if each of the following conditions is met:

(A) the sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this section; and

(B) the area or room is subject to the licensee's control.

(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs in accordance with subsection (aa) of this section provided that the patient could be released from licensee control in accordance with this chapter.

(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source(s) provided the radiation level at 30 centimeters from the surface of the sealed source container(s) or housing(s) does not exceed 0.005 rem (0.05 mSv) per hour.

(4) Rooms in medical facilities that are used for teletherapy are exempt from the requirement to post caution signs in accordance with subsection (aa) of this section provided the following conditions are met.

(A) Access to the room is controlled in accordance with this chapter; and

(B) Personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this section.

(cc) Labeling containers.

(1) The licensee shall ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." The label

shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

(2) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(dd) Exemptions to labeling requirements. A licensee is not required to label:

(1) containers holding licensed material in quantities less than the quantities listed in subsection (ggg)(3) of this section;

(2) containers holding licensed material in concentrations less than those specified in Table III of subsection (ggg)(2) of this section;

(3) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this section;

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the DOT (labeling of packages containing radioactive materials is required by the DOT if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by DOT regulations 49 CFR §§173.403(m) and (w) and 173.424);

(5) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells. The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) installed manufacturing or process equipment, such as piping and tanks.

(ee) Procedures for receiving and opening packages.

(1) Each licensee who expects to receive a package containing quantities of radioactive material in excess of a Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(s)(1) of this title (relating to Packaging and Transportation of Radioactive Material), shall make arrangements to receive:

(A) the package when the carrier offers it for delivery; or

(B) the notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

(2) Each licensee shall:

(A) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations Title 49, CFR, §§172.403 and 172.436-440, for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in §289.201(b) of this title;

(B) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations 49 CFR §§172.403 and §§172.436-440, for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in §289.201(b) of this title and specified in §289.257(s)(1) of this title; and

(C) monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

(3) The licensee shall perform the monitoring required by paragraph (2) of this subsection as soon as practicable after receipt of the package, but not later than three hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours. If a package is received after working hours, the package shall be monitored no later than three hours from the beginning of the next working day. If the licensee discovers there is evidence of degradation of package integrity, such as a package that is crushed, wet, or damaged, the package shall be surveyed immediately.

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) Limits for removable radioactive surface contamination levels.

(i) The level of removable radioactive contamination on the external surfaces of each package offered for shipment shall be ALARA. The level of removable radioactive contamination may be determined by wiping an area of 300 square centimeters (cm2) of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the removable contamination levels. Except as provided in clause (iii) of this subparagraph, the amount of radioactivity measured on any single wiping material, when averaged over the surface wiped, must not exceed the limits given in clause (ii) of this subparagraph at any time during transport. If other methods are used, the detection efficiency of the method used must be taken into account and in no case may the removable contamination on the external surfaces of the package exceed 10 times the limits listed in clause (ii) of this subparagraph.

(ii) Removable external radioactive contamination wipe limits are as follows.
Figure: 25 TAC §289.202(ee)(4)(A)(ii) (No change.)

(iii) In the case of packages transported as exclusive use shipments by rail or highway only, the removable radioactive contamination at any time during transport must not exceed 10 times the levels prescribed in clause (ii) of this subparagraph. The levels at the beginning of transport must not exceed the levels in clause (ii) of this subparagraph.

(B) Limits for external radiation levels.

(i) External radiation levels around the package and around the vehicle, if applicable, will not exceed 200 millirems per hour (mrem/hr) (2 millisieverts per hour (mSv/hr)) at any point on the external surface of the package at any time during transportation. The transport index shall not exceed 10.

(ii) For a package transported in exclusive use by rail, highway or water, radiation levels external to the package may exceed the limits specified in clause (i) of this subparagraph but shall not exceed any of the following:

(I) 200 mrem/hr (2 mSv/hr) on the accessible external surface of the package unless the following conditions are met, in which case the limit is 1,000 mrem/hr (10 mSv/hr):

(-a-) the shipment is made in a closed transport vehicle;

(-b-) provisions are made to secure the package so that its position within the vehicle remains fixed during transportation; and

(-c-) there are no loading or unloading operations between the beginning and end of the transportation;

(II) 200 mrem/hr (2 mSv/hr) at any point on the outer surface of the vehicle, including the upper and lower surfaces, or, in the case of a flat-bed style vehicle, with a personnel barrier, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure, if used), and on the lower external surface of the vehicle (a flat-bed style vehicle with a personnel barrier shall have radiation levels determined at vertical planes. If no personnel barrier, the package cannot exceed 200 mrem/hr (2 mSv/hr) at the surface.);

(III) 10 mrem/hr (0.1 mSv/hr) at any point 2 m from the vertical planes represented by the outer lateral surfaces of the vehicle, or, in the case of a flat-bed style vehicle, at any point 2 m from the vertical planes projected from the outer edges of the vehicle; and

(IV) 2 mrem/hr (0.02 mSv/hr) in any normally occupied positions of the vehicle, except that this provision does not apply to private motor carriers when persons occupying these positions are provided with special health supervision, personnel radiation exposure monitoring devices, and training in accordance with §289.203(c) of this title (relating to Notices, Instructions, and Reports to Workers; Inspections).

(5) Each licensee shall:

(A) establish, maintain, and retain written procedures for safely opening packages in which radioactive material is received; and

(B) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(6) Licensees transferring special form sources in vehicles owned or operated by the licensee to and from a work site are exempt from the contamination monitoring requirements of paragraph (2) of this subsection, but are not exempt from the monitoring requirement in paragraph (2) of this subsection for measuring radiation levels that ensures that the source is still properly lodged in its shield.

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) by transfer to an authorized recipient as provided in subsection (jj) of this section, §289.252 of this title, §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), §289.257 of this title, §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), or to the United States Department of Energy (DOE);

(B) by decay in storage with prior approval from the agency, except as authorized in §289.256(x) of this title (relating to Medical and Veterinary Use of Radioactive Material);

(C) by release in effluents within the limits in subsection (n) of this section; or

(D) as authorized in accordance with paragraph (2) of this subsection, and subsections (gg) and (hh) of this section.

(2) Upon agency approval, emission control dust and other material from electric arc furnaces or foundries contaminated as a result of inadvertent melting of cesium-137 or americium-241 sources may be transferred for disposal to a hazardous waste disposal facility authorized by the Texas Commission on Environmental Quality (Commission) or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or the EPA. The material may be transferred for disposal without regard to its radioactivity if the following conditions are met.

(A) Contaminated material described in paragraph (2) of this subsection, whether packaged or unpackaged (i.e., bulk), must be treated through stabilization to comply with all waste treatment requirements of the appropriate state or federal regulatory agency as listed in this paragraph. The treatment operations must be undertaken by either of the following:

(i) the owner/operator of the electric arc furnace or foundry licensed to possess, treat or transfer cesium-137 or americium-241 contaminated incident-related material; or

(ii) a service contractor licensed by the agency, NRC, or an agreement state to possess, treat, or transfer cesium-137 or americium-241 contaminated incident-related material.

(B) The emission control dust and other incident-related materials have been stored (if applicable) and transferred in accordance with operating and emergency procedures approved by the agency.

(C) The total cesium-137 or americium-241 activity contained in emission control dust and other incident-related materials to be transferred to a hazardous waste disposal facility has been specifically approved by NRC or the appropriate agreement state(s) and does not exceed the total activity associated with the inadvertent melting incident.

(D) The hazardous waste disposal facility operator has been notified in writing of the impending transfer of the incident-related materials and has agreed in writing to receive and dispose of the packaged or unpackaged materials. Copies of the notification and agreement shall be submitted to the agency.

(E) The licensee, as listed in subparagraph (A)(i) or (ii) of this paragraph, notifies the NRC or agreement state(s) in which the transferor and transferee are located, in writing, of the impending transfer, at least 30 days before the transfer.

(F) The packaged stabilized material has been packaged for transportation and disposal in non-bulk steel packaging as defined in DOT regulations at 49 CFR §173.213.

(G) The emission control dust and other incident-related materials that have been stabilized and packaged as described in subparagraph (F) of this paragraph shall contain pretreatment average concentrations of cesium-137 that do not exceed 130 pCi/g of material, above background, or pretreatment average concentrations of americium-241 that do not exceed 3 pCi/g of material, above background.

(H) The dose rate at 3.28 feet (1 m) from the surface of any package containing stabilized waste shall not exceed 20 µrem per hour or 0.20 µSv per hour, above background.

(I) The unpackaged stabilized material shall contain pretreatment average concentrations of cesium-137 that do not exceed 100 pCi/g of material, above background, or pretreatment average

concentrations of americium-241 that do not exceed 3 pCi/g of material, above background.

(J) The licensee transferring the cesium-137 or americium -241 contaminated incident-related material must consult with the agency, the Commission or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under RCRA, or the EPA and other authorized parties, including state and local governments, and obtain all necessary approvals, in addition to those of NRC and/or appropriate agreement states, for the transfers described in paragraph (2) of this subsection.

(K) Nothing in this subsection shall be or is intended to be construed as a waiver of any RCRA permit condition or term, of any state or local statute or regulation, or of any federal RCRA regulation.

(L) The total incident-related cesium-137 activity described in paragraph (2) of this subsection received by a facility over its operating life shall not exceed 1 Ci (37 GBq). The total incident-related americium-241 activity described in paragraph (2) of this subsection received by a facility over its operating life shall not exceed 30 mCi (1.11MBq). The agency will maintain a record of the total incident-related cesium-137 or americium-241 activity shipped by a person licensed by the agency. Upon consultation with the Commission, the agency will determine if the total incident-related activity received by a hazardous waste disposal facility over its operating life has reached 1 Ci (37 GBq) of cesium-137 or 30 mCi (1.11MBq) of americium-241. The agency will not approve shipments of cesium-137 or americium-241 contaminated incident-related material that will cause this limit to be exceeded.

(3) A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(A) treatment prior to disposal;

(B) treatment by incineration;

(C) decay in storage;

(D) disposal at an authorized land disposal facility; or

(E) storage until transferred to a storage or disposal facility authorized to receive the waste.

(gg) Discharge by release into sanitary sewerage.

(1) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

(A) the material is readily soluble, or is readily dispersible biological material, in water;

(B) the quantity of licensed radioactive material that the licensee releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in Table III of subsection (ggg)(2) of this section; and

(C) if more than one radionuclide is released, the following additional conditions must also be satisfied:

(i) the fraction of the limit in Table III of subsection (ggg)(2) of this section represented by discharges into sanitary sewerage determined by dividing the actual monthly average concentration of each radionuclide released by the licensee into the sewer by the concentration of that radionuclide listed in Table III of subsection (ggg)(2) of this section; and

(ii) the sum of the fractions for each radionuclide required by clause (i) of this subparagraph does not exceed unity; and

(D) the total quantity of licensed radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 5 curies (Ci) (185 gigabecquerels (GBq)) of hydrogen-3, 1 Ci (37 GBq) of carbon-14, and 1 Ci (37 GBq) of all other radioactive materials combined.

(2) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in paragraph (1) of this subsection.

(hh) Treatment by incineration. A licensee may treat licensed material by incineration only in the form and concentration specified in subsection (fff)(1) of this section or as authorized by the agency.

(ii) Discharge by release into septic tanks. No licensee shall discharge radioactive material into a septic tank system except as specifically approved by the agency.

(jj) Transfer for disposal and manifests.

(1) The control of transfers of LLRW intended for disposal at a licensed low-level radioactive waste disposal facility, the establishment of a manifest tracking system, and additional requirements concerning transfers and recordkeeping for those wastes are found in §289.257(s)(5) of this title.

(2) Each person involved in the transfer of waste for disposal including the waste generator, waste collector, and waste processor, shall comply with the requirements specified in §289.257(s)(5) of this title.

(kk) Compliance with environmental and health protection regulations. Nothing in subsections (ff), (gg), (hh), or (jj) of this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous properties of materials that may be disposed of in accordance with subsections (ff), (gg), (hh), or (jj) of this section.

(ll) General provisions for records.

(1) Each licensee shall use the International System of Units (SI) units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with subsections (ee)(4) and (ggg)(6) of this section. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The SI units followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, either unit may be used.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, when recording information on shipment manifests, as required in §289.257 of this title, information must be recorded in SI units or in SI and units as specified in paragraph (1) of this subsection.

(3) The licensee shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

(4) Records required in accordance with §289.201(d) of this title, and subsections (mm) - (oo), (tt), and (uu) of this section shall include the date and the identification of individual(s) making the record, and, as applicable, a unique identification of survey instrument(s) used, and an exact description of the location of the survey.

Records of receipt, transfer, and disposal of sources of radiation shall uniquely identify the source of radiation.

(5) Copies of records required in accordance with §289.201(d) of this title, and subsections (mm) - (uu) of this section, and by license condition that are relevant to operations at an additional authorized use/storage site shall be maintained at that site in addition to the main site specified on a license.

(mm) Records of radiation protection programs.

(1) Each licensee shall maintain records of the radiation protection program, including:

(A) the provisions of the program; and

(B) audits and other reviews of program content and implementation.

(2) The licensee shall retain the records required by paragraph (1)(A) of this subsection until the agency terminates each pertinent license requiring the record. The licensee shall retain the records required by paragraph (1)(B) of this subsection for three years after the record is made.

(nn) Records of surveys.

(1) Each licensee shall maintain records showing the results of surveys and calibrations required by subsections (p) and (ee)(2) of this section. The licensee shall retain these records for three years after the record is made.

(2) The licensee shall retain each of the following records until the agency terminates each pertinent license requiring the record:

(A) the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents; and

(B) results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose; and

(C) results of air sampling, surveys, and bioassays required in accordance with subsection (x)(1)(C)(i) and (ii) of this section; and

(D) results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(oo) Records of tests for leakage or contamination of sealed sources. Records of tests for leakage or contamination of sealed sources required by §289.201(g) of this title shall be kept in units of becquerel or microcurie and retained for inspection by the agency for five years after the records are made.

(pp) Records of lifetime cumulative occupational radiation dose. The licensee shall retain the records of lifetime cumulative occupational radiation dose as specified in subsection (k) of this section on BRC Form 202-2 or equivalent until the agency terminates each pertinent license requiring this record. The licensee shall retain records used in preparing BRC Form 202-2 or equivalent for three years after the record is made.

(qq) Records of planned special exposures.

(1) For each use of the provisions of subsection (k) of this section for planned special exposures, the licensee shall maintain records that describe:

(A) the exceptional circumstances requiring the use of a planned special exposure;

(B) the name of the management official who authorized the planned special exposure and a copy of the signed authorization;

(C) what actions were necessary;

(D) why the actions were necessary;

(E) what precautions were taken to assure that doses were maintained ALARA;

(F) what individual and collective doses were expected to result; and

(G) the doses actually received in the planned special exposure.

(2) The licensee shall retain the records until the agency terminates each pertinent license requiring these records.

(rr) Records of individual monitoring results.

(1) Each licensee shall maintain records of doses received by all individuals for whom monitoring was required in accordance with subsection (q) of this section, and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(A) the deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities;

(B) the estimated intake of radionuclides, see subsection (g) of this section;

(C) the committed effective dose equivalent assigned to the intake of radionuclides;

(D) the specific information used to calculate the committed effective dose equivalent in accordance with subsection (i)(1) and (3) of this section and when required by subsection (q)(1) of this section;

(E) the total effective dose equivalent when required by subsection (g) of this section;

(F) the total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose; and

(G) the data used to make occupational dose assessments in accordance with subsection (j)(5) of this section.

(2) The licensee shall make entries of the records specified in paragraph (1) of this subsection at intervals not to exceed 1 year and by April 30 of the following year.

(3) The licensee shall maintain the records specified in paragraph (1) of this subsection on BRC Form 202-3, in accordance with the instructions for BRC Form 202-3, or in clear and legible records containing all the information required by BRC Form 202-3.

(4) The licensee shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

(5) The licensee shall retain each required form or record until the agency terminates each pertinent license requiring the record. The licensee shall retain records used in preparing BRC Form 202-3 or equivalent for three years after the record is made.

(ss) Records of dose to individual members of the public.

(1) Each licensee shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public. See subsection (n) of this section.

(2) The licensee shall retain the records required by paragraph (1) of this subsection until the agency terminates each pertinent license requiring the record.

(tt) Records of discharge, treatment, or transfer for disposal.

(1) Each licensee shall maintain records of the discharge or treatment of licensed materials made in accordance with subsection (gg) and (hh) of this section and of transfers for disposal made in accordance with subsection (jj) of this section and §289.257 of this title.

(2) The licensee shall retain the records required by paragraph (1) of this subsection until the agency terminates each pertinent license requiring the record.

(uu) Records of testing entry control devices for very high radiation areas.

(1) Each licensee shall maintain records of tests made in accordance with subsection (u)(2)(I) of this section on entry control devices for very high radiation areas. These records must include the date, time, and results of each such test of function.

(2) The licensee shall retain the records required by paragraph (1) of this subsection for three years after the record is made.

(vv) Form of records. Each record required by this chapter shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records, such as letters, drawings, and specifications, shall include all pertinent information, such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(ww) Reports of stolen, lost, or missing licensed sources of radiation.

(1) Each licensee shall report to the agency by telephone as follows:

(A) immediately after its occurrence becomes known to the licensee, stolen, lost, or missing licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in subsection (ggg)(3) of this section, under such circumstances that it appears to the licensee that an exposure could result to individuals in unrestricted areas; or

(B) within 30 days after its occurrence becomes known to the licensee, lost, stolen, or missing licensed radioactive material in an aggregate quantity greater than 10 times the quantity specified in subsection (ggg)(3) of this section that is still missing.

(2) Each licensee required to make a report in accordance with paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency setting forth the following information:

(A) a description of the licensed source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form;

(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the licensed source of radiation involved;

(D) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

(E) actions that have been taken, or will be taken, to recover the source of radiation; and

(F) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed sources of radiation.

(3) Subsequent to filing the written report, the licensee shall also report additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(4) The licensee shall prepare any report filed with the agency in accordance with this subsection so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(xx) Notification of incidents.

(1) Notwithstanding other requirements for notification, each licensee shall immediately report each event involving a source of radiation possessed by the licensee that may have caused or threatens to cause:

(A) an individual to receive:

(i) a total effective dose equivalent of 25 rems (0.25 Sv) or more;

(ii) a lens dose equivalent of 75 rems (0.75 Sv) or more; or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rads (2.5 grays) or more; or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(2) Each licensee shall, within 24 hours of discovery of the event, report to the agency each event involving loss of control of a licensed source of radiation possessed by the licensee that may have caused, or threatens to cause:

(A) an individual to receive, in a period of 24 hours:

(i) a total effective dose equivalent exceeding 5 rems (0.05 Sv);

(ii) a lens dose equivalent exceeding 15 rems (0.15 Sv); or

(iii) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 Sv); or

(B) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(3) Licensees shall make the initial notification reports required by paragraphs (1) and (2) of this subsection by telephone to the agency and shall confirm the initial notification report within 24 hours by telegram, mailgram, or facsimile to the agency.

(4) The licensee shall prepare each report filed with the agency in accordance with this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(5) The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported in accordance with subsection (zz) of this section.

(6) Each licensee shall notify the agency as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(7) Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving radioactive material:

(A) an unplanned contamination event that:

(i) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in subsection (ggg)(2) of this section for the material; and

(iii) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(B) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required to be available and operable when it is disabled or fails to function; and

(iii) no redundant equipment is available and operable to perform the required safety function;

(C) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(D) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in subsection (ggg)(2) of this section for the material; and

(ii) the damage affects the integrity of the radioactive material or its container.

(8) Preparation and submission of reports. Reports made by licensees in response to the requirements of paragraphs (6) and (7) of this subsection shall be made as follows.

(A) Licensees shall make reports required by paragraphs (6) and (7) of this subsection by telephone to the agency. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the isotopes, quantities, and chemical and physical form of the radioactive material involved; and

(v) any personnel radiation exposure data available.

(B) Each licensee who makes a report required by paragraphs (6) and (7) of this subsection shall submit to the agency a written follow-up report within 30 days of the initial report. Written reports prepared in accordance with other requirements of this chapter may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. The reports must include the following:

(i) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the isotopes, quantities, and chemical and physical form of the radioactive material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) the extent of exposure of individuals to radioactive materials without identification of individuals by name.

(yy) Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the limits.

(1) In addition to the notification required by subsection (xx) of this section, each licensee shall submit a written report within 30 days after learning of any of the following occurrences:

(A) incidents for which notification is required by subsection (xx) of this section;

(B) doses in excess of any of the following:

(i) the occupational dose limits for adults in subsection (f) of this section;

(ii) the occupational dose limits for a minor in subsection (l) of this section;

(iii) the limits for an embryo/fetus of a declared pregnant woman in subsection (m) of this section;

(iv) the limits for an individual member of the public in subsection (n) of this section;

(v) any applicable limit in the license; or

(vi) the ALARA constraints for air emissions as required by subsection (e)(4) of this section;

(C) levels of radiation or concentrations of radioactive material in:

(i) a restricted area in excess of applicable limits in the license; or

(ii) an unrestricted area in excess of 10 times the applicable limit set forth in this section or in the license, whether or not involving exposure of any individual in excess of the limits in subsection (n) of this section; or

(D) for licensees subject to the provisions of the EPA's generally applicable environmental radiation standards in 40 CFR §190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those requirements.

(2) Each report required by paragraph (1) of this subsection shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(A) estimates of each individual's dose;

(B) the levels of radiation and concentrations of radioactive material involved;

(C) the cause of the elevated exposures, dose rates, or concentrations; and

(D) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license conditions.

(3) Each report filed in accordance with paragraph (1) of this subsection shall include for each individual exposed: the name, identification number, and date of birth. With respect to the limit for the embryo/fetus in subsection (m) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(4) All licensees who make reports in accordance with paragraph (1) of this subsection shall submit the report in writing to the agency.

(zz) Reports of planned special exposures. The licensee shall submit a written report to the agency within 30 days following any planned special exposure conducted in accordance with subsection (k) of this section, informing the agency that a planned special exposure was conducted and indicating the date the planned special exposure occurred and the information required by subsection (qq) of this section.

(aaa) Notifications and reports to individuals.

(1) Requirements for notification and reports to individuals of exposure to sources of radiation are specified in §289.203 of this title.

(2) When a licensee is required in accordance with subsection (yy) or (zz) of this section to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to sources of radiation, the licensee shall also notify the individual and provide a copy of the report submitted to the agency, to the individual. Such notice shall be transmitted at a time not later than the transmittal to the agency, and shall comply with the provisions of §289.203(d)(1) of this title.

(bbb) Reports of leaking or contaminated sealed sources. The licensee shall immediately notify the agency if the test for leakage or contamination required in accordance with §289.201(g) of this title indicates a sealed source is leaking or contaminated. A written report of a leaking or contaminated source shall be submitted to the agency within five days. The report shall include the equipment involved, the test results and the corrective action taken.

(ccc) Vacating premises.

(1) Each licensee or person possessing non-exempt sources of radiation shall, no less than 30 days before vacating and relinquishing possession or control of premises, notify the agency, in writing, of the intent to vacate.

(2) The licensee or person possessing non-exempt radioactive material shall decommission the premises to a degree consistent with subsequent use as an unrestricted area and in accordance with the requirements of subsection (ddd) of this section or, for uranium recovery and byproduct material disposal facilities licensed in accordance with §289.260 of this title, subsection (eee) of this section.

(ddd) Radiological requirements for license termination.

(1) General provisions and scope.

(A) The requirements in this section apply to the decommissioning of facilities licensed in accordance with §289.252 of this title (relating to Licensing of Radioactive Material), §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), §289.255 of this title (relating to Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography), and §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators). The requirements do not apply to uranium recovery and byproduct material disposal facilities already subject to the requirements of §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities).

(B) The requirements in this section do not apply to the following:

(i) sites that have been decommissioned prior to October 1, 2000, in accordance with requirements identified in this section and in §289.252 of this title; or

(ii) sites that have previously submitted and received approval on a decommissioning plan by October 1, 2000.

(C) After a site has been decommissioned and the license terminated in accordance with the requirements in the subsection, the agency will require additional cleanup if it determines that the requirements of the subsection were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(D) When calculating TEDE to the average member of the critical group, the licensee shall determine the peak annual TEDE dose expected within the first 1,000 years after decommissioning.

(2) Radiological requirements for unrestricted use. A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are ALARA. Determination of the levels that are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

(3) Alternate requirements for license termination.

(A) The agency may terminate a license using alternate requirements greater than the dose requirements specified in paragraph (2) of this subsection if the licensee does the following:

(i) provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv per year (100 mrem per year) limit specified in

subsection (o) of this section, by submitting an analysis of possible sources of exposure;

(ii) reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(iii) has submitted a decommissioning plan to the agency indicating the licensee's intent to decommission in accordance with the requirements in §289.252(l)(7) of this title, and specifying that the licensee proposes to decommission by use of alternate requirements. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for the following:

(I) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(II) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(III) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(B) The use of alternate requirements to terminate a license requires the approval of the agency after consideration of the agency's recommendations that will address any comments provided by the EPA and any public comments submitted in accordance with paragraph (4) of this subsection.

(4) Public notification and public participation. Upon receipt of a decommissioning plan from the licensee, or a proposal from the licensee for release of a site in accordance with paragraph (3) of this subsection, or whenever the agency deems such notice to be in the public interest, the agency will do the following:

(A) notify and solicit comments from the following:

(i) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(ii) the EPA for cases where the licensee proposes to release a site in accordance with paragraph (3) of this subsection; and

(B) publish a notice in the *Texas Register* and a forum, such as local newspapers, letters to state of local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

(5) Minimization of contamination. Applicants for licenses, other than renewals, after October 1, 2000, shall describe in the application how facility design and procedures for operation will minimize, to the extent practical, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practical, the generation of LLRW.

(eee) Limits for contamination of soil, surfaces of facilities and equipment, and vegetation.

(1) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of surfaces of facilities or equipment in unrestricted areas to the extent that the contamination exceeds the limits specified in subsection (ggg)(6) of this section.

(2) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) subsection (ggg)(8) of this section; or

(B) the effluent concentrations in Table II, Column 2 of subsection (ggg)(2)(F) of this section, with the units changed from microcuries per milliliter to microcuries per gram, for radionuclides not specified in subsection (ggg)(8) of this section or paragraph (4) of this subsection.

(3) Where combinations of radionuclides are involved, the sum of the ratios between the concentrations present and the limits specified in paragraph (2) of this subsection shall not exceed one.

(4) Notwithstanding the limits specified in paragraph (2) of this subsection, no licensee shall cause the concentration of radium-226 or radium-228 in soil in unrestricted areas, averaged over any 100 square meters (m2), to exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) (0.185 becquerel per gram (Bq/g)), averaged over the first 15 cm of soil below the surface; and

(B) 15 pCi/g (0.555 Bq/g), averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(5) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of vegetation in unrestricted areas to exceed 5 pCi/g (0.185 Bq/g), based on dry weight, for radium-226 or radium-228.

(6) Notwithstanding the limits specified in paragraph (2) of this subsection, no licensee shall cause the concentration of natural uranium with no daughters present, based on dry weight and averaged over any 100 m2 of area, to exceed the following limits:

(A) 30 pCi/g (1.11 Bq/g), averaged over the top 15 cm of soil below the surface; and

(B) 150 pCi/g (5.55 Bq/g), average concentration at depths greater than 15 centimeters below the surface so that no individual member of the public will receive an effective dose equivalent in excess of 100 mrem (1 mSv) per year.

(fff) Exemption of specific wastes.

(1) A licensee may discard the following licensed material without regard to its radioactivity:

(A) 0.05 microcurie (µCi) (1.85 kilobecquerels (kBq)), or less, of hydrogen-3, carbon-14, or iodine-125 per gram of medium used for liquid scintillation counting or in vitro clinical or in vitro laboratory testing; and

(B) 0.05 µCi (1.85 kBq), or less, of hydrogen-3, carbon-14, or iodine-125, per gram of animal tissue, averaged over the weight of the entire animal.

(2) A licensee shall not discard tissue in accordance with paragraph (1)(B) of this subsection in a manner that would permit its use either as food for humans or as animal feed.

(3) The licensee shall maintain records in accordance with subsection (tt) of this section.

(4) Any licensee, except those licensed in accordance with §289.254 of this title, may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in

a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (30 Texas Administrative Code Chapter 330), unless such licensed material also contains hazardous waste, as defined in §3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

(5) Each licensee who discards material described in paragraphs (1) or (4) of this subsection shall:

(A) make surveys adequate to assure that the limits of paragraphs (1) or (4) of this subsection are not exceeded; and

(B) remove or otherwise obliterate or obscure all labels, tags, or other markings that would indicate that the material or its contents is radioactive.

(6) Prior to authorizations in accordance with paragraph (4) of this subsection, a licensee shall submit procedures to the agency for:

(A) the physical delivery of the material to the disposal site;

(B) surveys to be performed for compliance with paragraph (5)(A) of this subsection;

(C) maintaining secure packaging during transportation to the site; and

(D) maintaining records of any discards made under paragraph (4) of this subsection.

(7) Nothing in this section relieves the licensee of maintaining records showing the receipt, transfer, and discard of such radioactive material as specified in §289.201(d) of this title.

(8) Nothing in this section relieves the licensee from complying with other applicable federal, state, and local regulations governing any other toxic or hazardous property of these materials.

(9) Licensed material discarded under this section is exempt from the requirements of §289.252(t) of this title.

(ggg) Appendices.

(1) Assigned protection factors for respirators. The following table contains assigned protection factors for respirators [a]:
Figure: 25 TAC §289.202(ggg)(1) (No change.)

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

(A) Introduction.

(i) For each radionuclide, Table I of subparagraph (F) of this paragraph indicates the chemical form that is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 micron, and for three classes (D, W, Y) of radioactive material, which refer to their retention (approximately days, weeks, or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days. Table II of subparagraph (F) of this paragraph provides concentration limits for airborne and liquid effluents released to the general environment. Table III of subparagraph (F) of this paragraph provides concentration limits for discharges to sanitary sewerage.

(ii) The values in Tables I, II, and III of subparagraph (F) of this paragraph are presented in the computer "E" notation. In this notation a value of 6E-02 represents a value of 6×10^{-2} or 0.06, 6E+2 represents 6×10^{2} or 600, and 6E+0 represents 6×10^{0} or 6.

(B) Occupational values.

(i) Note that the columns in Table I of subparagraph (F) of this paragraph captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by "Reference Man" that would result in either a committed effective dose equivalent of 5 rems (0.05 Sv), stochastic ALI, or a committed dose equivalent of 50 rems (0.5 Sv) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 Sv). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(iii) A value of $w_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the GI tract; stomach, small intestine, upper large intestine, and lower large intestine, are to be treated as four separate organs.

(iv) The dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

(v) When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used as follows:

(I) LLI wall = lower large intestine wall;

(II) St. wall = stomach wall;

(III) Blad wall = bladder wall; and

(IV) Bone surf = bone surface.

(vi) Figure: 25 TAC §289.202(ggg)(2)(B)(vi) (No change.)

(vii) The dose equivalents for an extremity, skin, and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

(viii) The DAC values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI is given by:
Figure: 25 TAC §289.202(ggg)(2)(B)(viii) (No change.)

(ix) The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs

based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

(x) The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides should be treated by the general method appropriate for mixtures.

(xi) The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation. See subsection (g) of this section. When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as, Class D, Class W, or Class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

(xii) It should be noted that the classification of a compound as Class D, W, or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for Class D, W, and Y compounds, even for very short-lived radionuclides.

(C) Effluent concentrations.

(i) The columns in Table II of subparagraph (F) of this paragraph captioned "Effluents," "Air," and "Water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of subsection (o) of this section. The concentration values given in Columns 1 and 2 of Table II of subparagraph (F) of this paragraph are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 mSv).

(ii) Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in Table II of subparagraph (F) of this paragraph. For this reason, the DAC and airborne effluent limits are not always proportional as they were in the previous radiation protection standards.

(iii) The air concentration values listed in Column I of Table II of subparagraph (F) of this paragraph were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^9, relating the inhalation ALI to the DAC, as explained in subparagraph (B)(viii) of this paragraph, and then divided by a factor of 300. The factor of 300 includes the following components:

(I) a factor of 50 to relate the 5 rems (0.05 Sv) annual occupational dose limit to the 0.1 rem limit for members of the public;

(II) a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and

(III) a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

(iv) For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in Column 3 of Table I of subparagraph (F) of this paragraph was divided by 219. The factor of 219 is composed of a factor of 50, as described in clause (iii) of this subparagraph, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7. The factor of 7.3×10^7 milliliters (ml) includes the following components:

(I) the factors of 50 and 2 described in clause (iii) of this subparagraph; and

(II) a factor of 7.3×10^5 (ml) which is the annual water intake of "Reference Man."

(vi) Note 2 of subparagraph (F) of this paragraph provides groupings of radionuclides that are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations, and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

(D) Releases to sewers. The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in subsection (gg) of this section. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 (ml). The factor of 7.3×10^6 (ml) is composed of a factor of 7.3×10^5 (ml), the annual water intake by "Reference Man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "Reference Man" during a year, would result in a committed effective dose equivalent of 0.5 rem.

(E) List of elements.
Figure: 25 TAC §289.202(ggg)(2)(E) (No change.)

(F) Tables--Values for annual limits. The following tables contain values for annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage:
Figure: 25 TAC §289.202(ggg)(2)(F) (No change.)

(3) Quantities of licensed material requiring labeling. The following tables contain quantities of licensed material requiring labeling:
Figure: 25 TAC §289.202(ggg)(3) (No change.)

(4) Classification and characteristics of low-level radioactive waste (LLRW).

(A) Classification of radioactive waste for land disposal.

(i) Considerations. Determination of the classification of LLRW involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived

radionuclides for which requirements on institutional controls, waste form, and disposal methods are effective.

(ii) Classes of waste.

(I) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in subparagraph (B)(i) of this paragraph. If Class A waste also meets the stability requirements set forth in subparagraph (B)(ii) of this paragraph, it is not necessary to segregate the waste for disposal.

(II) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(III) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirements set forth in subparagraph (B) of this paragraph.

(iii) Classification determined by long-lived radionuclides. If the radioactive waste contains only radionuclides listed in subclause (V) of this clause, classification shall be determined as follows.

(I) If the concentration does not exceed 0.1 times the value in subclause (V) of this clause, the waste is Class A.

(II) If the concentration exceeds 0.1 times the value in Table I, but does not exceed the value in subclause (V) of this clause, the waste is Class C.

(III) If the concentration exceeds the value in subclause (V) of this clause, the waste is not generally acceptable for land disposal.

(IV) For wastes containing mixtures of radionuclides listed in subclause (V) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(V) Classification table for long-lived radionuclides.
Figure: 25 TAC §289.202(ggg)(4)(A)(iii)(V) (No change.)

(iv) Classification determined by short-lived radionuclides. If the waste does not contain any of the radionuclides listed in clause (iii)(V) of this subparagraph, classification shall be determined based on the concentrations shown in subclause (VI) of this clause. However, as specified in clause (vi) of this subparagraph, if radioactive waste does not contain any nuclides listed in either clause (iii)(V) of this subparagraph or subclause (VI) of this clause, it is Class A.

(I) If the concentration does not exceed the value in Column 1 of subclause (VI) of this clause, the waste is Class A.

(II) If the concentration exceeds the value in Column 1 of subclause (VI) of this clause but does not exceed the value in Column 2 of subclause (VI) of this clause, the waste is Class B.

(III) If the concentration exceeds the value in Column 2 of subclause (VI) of this clause but does not exceed the value in Column 3 of subclause (VI) of this clause, the waste is Class C.

(IV) If the concentration exceeds the value in Column 3 of subclause (VI) of this clause, the waste is not generally acceptable for near-surface disposal.

(V) For wastes containing mixtures of the radionuclides listed in subclause (VI) of this clause, the total concentration shall be determined by the sum of fractions rule described in clause (vii) of this subparagraph.

(VI) Classification table for short-lived radionuclides.
Figure: 25 TAC §289.202(ggg)(4)(A)(iv)(VI) (No change.)

(v) Classification determined by both long- and short-lived radionuclides. If the radioactive waste contains a mixture of radionuclides, some of which are listed in clause (iii)(V) of this subparagraph and some of which are listed in clause (iv)(VI) of this subparagraph, classification shall be determined as follows:

(I) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph is less than 0.1 times the value listed in clause (iii)(V) of this subparagraph, the class shall be that determined by the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph.

(II) If the concentration of a radionuclide listed in clause (iii)(V) of this subparagraph exceeds 0.1 times the value listed in clause (iii)(V) of this subparagraph, but does not exceed the value listed in clause (iii)(V) of this subparagraph, the waste shall be Class C, provided the concentration of radionuclides listed in clause (iv)(VI) of this subparagraph does not exceed the value shown in Column 3 of clause (iv)(VI) of this subparagraph.

(vi) Classification of wastes with radionuclides other than those listed in clauses (iii)(V) and (iv)(VI) of this subparagraph. If the waste does not contain any radionuclides listed in either clauses (iii)(V) and (iv)(VI) of this subparagraph, it is Class A.

(vii) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 curies per cubic meter (Ci/m ^{3} (1.85 terabecquerels per cubic meter (TBq/m ^{3})) and Cs-137 in a concentration of 22 Ci/m ^{3} (814 gigabecquerels per cubic meter (GBq/m ^{3})). Since the concentrations both exceed the values in Column 1 of clause (iv)(VI) of this subparagraph, they must be compared to Column 2 values. For Sr-90 fraction, 50/150 = 0.33, for Cs-137 fraction, 22/44 = 0.5; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(viii) Determination of concentrations in wastes. The concentration of a radionuclide may be determined by indirect methods such as use of scaling factors, which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocurie (becquerel) per gram.

(B) Radioactive waste characteristics.

(i) The following are minimum requirements for all classes of waste and are intended to facilitate handling and provide protection of health and safety of personnel at the disposal site.

(I) Wastes shall be packaged in conformance with the conditions of the license issued to the site operator to which the waste will be shipped. Where the conditions of the site license are more restrictive than the provisions of this section, the site license conditions shall govern.

(II) Wastes shall not be packaged for disposal in cardboard or fiberboard boxes.

(III) Liquid waste shall be packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(IV) Solid waste containing liquid shall contain as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume.

(V) Waste shall not be readily capable of detonation or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

(VI) Waste shall not contain, or be capable of generating, quantities of toxic gases, vapors, or fumes harmful to persons transporting, handling, or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with subclause (VIII) of this clause.

(VII) Waste must not be pyrophoric. Pyrophoric materials contained in wastes shall be treated, prepared, and packaged to be nonflammable.

(VIII) Wastes in a gaseous form shall be packaged at an absolute pressure that does not exceed 1.5 atmospheres at 20 degrees Celsius. Total activity shall not exceed 100 Ci (3.7 terabecquerels (TBq)) per container.

(IX) Wastes containing hazardous, biological, pathogenic, or infectious material shall be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

(ii) The following requirements are intended to provide stability of the waste. Stability is intended to ensure that the waste does not degrade and affect overall stability of the site through slumping, collapse, or other failure of the disposal unit and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and nondispersible waste.

(I) Waste shall have structural stability. A structurally stable waste form will generally maintain its physical dimensions and its form, under the expected disposal conditions such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity, and internal factors such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

(II) Notwithstanding the provisions in clause (i)(III) and (IV) of this subparagraph, liquid wastes, or wastes containing liquid, shall be converted into a form that contains as little free-standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1.0% of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5% of the volume of the waste for waste processed to a stable form.

(III) Void spaces within the waste and between the waste and its package shall be reduced to the extent practicable.

(C) Labeling. Each package of waste shall be clearly labeled to identify whether it is Class A, Class B, or Class C waste, in accordance with subparagraph (A) of this paragraph.

(5) Time requirements for record keeping.
Figure: 25 TAC §289.202(ggg)(5) (No change.)

(6) Acceptable surface contamination levels.
Figure: 25 TAC §289.202(ggg)(6) (No change.)

(7) Concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility (for use in subsection (fff) of this section). The following table contains concentration and activity limits of nuclides for disposal in a Type I municipal solid waste site or a hazardous waste facility.
Figure: 25 TAC §289.202(ggg)(7) (No change.)

(8) Soil contamination limits for selected radionuclides (for use in subsection (eee) of this section).
Figure: 25 TAC §289.202(ggg)(8) (No change.)

(9) Cumulative occupational exposure form. The following, BRC Form 202-2, is to be used to document cumulative occupational exposure history: (Please find BRC Form 202-2 at the end of this section.)
Figure: 25 TAC §290.202(ggg)(9) (No change.)

(10) Occupational exposure form. The following, BRC Form 202-3, is to be used to document occupational exposure record for a monitoring period: (Please find BRC Form 202-3 at the end of this section.)
Figure: 25 TAC §289.202(ggg)(10) (No change.)

(hhh) Requirements for nationally tracked sources.

(1) Reports of transactions involving nationally tracked sources. Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report as specified in the following subparagraphs for each type of transaction.

(A) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the manufacturer, model, and serial number of the source;

(iv) the radioactive material in the source;

(v) the initial source strength in becquerels (curies) at the time of manufacture; and

(vi) the manufacture date of the source.

(B) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. A source transfer transaction does not include transfers to a temporary domestic job site. Domestic transactions in which the nationally tracked source remains in the possession of the licensee do not require a report to the National Source Tracking System. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the name and license number of the recipient facility and the shipping address;

(iv) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(v) the radioactive material in the source;

(vi) the initial or current source strength in becquerels (curies);

(vii) the date for which the source strength is reported;

(viii) the shipping date;

(ix) the estimated arrival date; and

(x) for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(C) Each licensee that receives a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the name, address, and license number of the person that provided the source;

(iv) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(v) the radioactive material in the source;

(vi) the initial or current source strength in becquerels (curies);

(vii) the date for which the source strength is reported;

(viii) the date of receipt; and

(ix) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(D) Each licensee that disassembles a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(iv) the radioactive material in the source;

(v) the initial or current source strength in becquerels (curies);

(vi) the date for which the source strength is reported; and

(vii) the disassemble date of the source.

(E) Each licensee who disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the waste manifest number;

(iv) the container identification with the nationally tracked source.

(v) the date of disposal; and

(vi) the method of disposal.

(F) The reports discussed in subparagraphs (A) through (E) of this paragraph shall be submitted to NRC by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the National Source Tracking System by using the following:

(i) the on-line National Source Tracking System;

(ii) electronically using a computer-readable format;

(iii) by facsimile;

(iv) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(v) by telephone with follow-up by facsimile or mail.

(G) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within 5 business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by subparagraphs (A) through (E) of this paragraph. By January 31 of each year, each licensee shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

(H) Each licensee that possesses Category 1 nationally tracked sources listed in paragraph (2) of this subsection shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by November 15, 2007. Each licensee that possesses Category 2 nationally tracked sources listed in paragraph (2) of this subsection shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by November 30, 2007. The information may be submitted to NRC by using any of the methods identified by subparagraph (F)(i) through (iv) of this paragraph. The initial inventory report shall include the following information:

(i) the name, address, and license number of the reporting licensee;

(ii) the name of the individual preparing the report;

(iii) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;

(iv) the radioactive material in the sealed source;

(v) the initial or current source strength in becquerels (curies); and

(vi) the date for which the source strength is reported.

(2) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion.
Figure: 25 TAC §289.202(hhh)(2)

(3) Serialization of nationally tracked sources. Each licensee who manufactures a nationally tracked source after February 6, 2007, shall assign a unique serial number to each nationally tracked source. Serial numbers shall be composed only of alpha-numeric characters.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: June 8, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.255

STATUTORY AUTHORITY

The repeal is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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25 TAC §289.255

STATUTORY AUTHORITY

The new section is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 421. HEALTH CARE INFORMATION

SUBCHAPTER A. COLLECTION AND RELEASE OF HOSPITAL DISCHARGE DATA

25 TAC §§421.1 - 421.10

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§421.1 - 421.10, concerning the collection and release of hospital discharge data. Sections 421.8 and 421.9 are adopted with changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6030). The changes are in response to comments and remove the additional requirement to collect and release the diagnosis present on admission indicators for the diagnosis codes submitted for every

patient. Sections 421.1 - 421.7 and 421.10 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Sections 421.1 - 421.10 establish the rules regarding the collection requirements and release specifications of hospital inpatient discharge data from Texas hospitals. The rules were originally developed and adopted by the Texas Health Care Information Council (council) and were transferred to the department as a result of the consolidation of health and human service agencies under House Bill 2292 (HB 2292), 78th Texas Legislature in 2004.

The amendments comply with Health and Safety Code, Chapter 108, which requires the Executive Commissioner to adopt rules to implement the data submission requirements for hospitals required under Chapter 108 to submit inpatient discharge data to the department.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 421.1 - 421.10 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In response to the consolidation of the council into the department, the terms "Council" or "Executive Director" are replaced with the term "department" throughout Subchapter A and the referenced section numbers are updated throughout the subchapter to reflect the numbers assigned when the rules were transferred to the department in 2004.

The amendments to §421.1 delete the terms "Council," "Executive Director," and "Scientific Review Panel" and add the terms "Institutional Review Board" and "department" to update the language in response to consolidation, and the terms are renumbered accordingly.

The amendments to §§421.2 - 421.7 revise references to old rules and legacy council references.

Section 421.5 also deletes obsolete references to Council members.

Section 421.7 also deletes an incorrect reference to the law on civil penalties.

The amendment to §421.8 does not include the proposed data element "Diagnosis Present on Admission" in the list of data elements required to be released in the public use data file submitted.

The amendment to §421.9 does not include the proposed data element "Diagnosis Present on Admission" in the list of data elements required to be submitted.

The amendments to §421.10 replace the Council's "Scientific Review Panel" with the department's "Institutional Review Board" as the entity authorized to review and grant or deny release of hospital discharge research data to requestors as specified in Health and Safety Code, Chapter 108.

Existing §421.10(c), (d) and paragraphs (1), (2), (4), (5) and (6) in subsection (e) are deleted as they are no longer required because the Institutional Review Board of the department has established policies and procedures.

Existing §421.10(f)(5) is deleted, as a result of the consolidation.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Children's Medical Center, Dallas; Dallas-Fort Worth Hospital Council (DFWHC); Driscoll Children Hospital; East Texas Medical Center (ETMC); Methodist Health System (MHS); Texas Hospital Association (THA); and Red River Regional Hospital. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §421.2(a), §421.8(c)(11)(IIII), and §421.9(d)(48), two commenters asked for clarification on whether pediatric hospitals were exempt from submitting Diagnosis Present on Admission (POA) under the rules just as pediatric hospitals are exempted by the Centers for Medicare and Medicaid Services (CMS) documents published after the proposed rules were drafted. Three commenters recommended that the department exempt their facility type or exempt all of the facilities specified by CMS.

Response: The commission disagrees with the commenters regarding providing exemptions to facilities. The department is removing the POA requirements from these rules to study the issue further as a result of these comments.

The POA indicator code is part of the Patient Safety and Pediatric Quality reporting methodologies developed by the United States Department of Health and Human Services, Agency for Healthcare Quality and Research and used by CMS for monitoring the quality of care and costs for Medicare clients in certain facilities. These methodologies are used by the department for public reporting which is part of the quality and effectiveness of care reporting mandated by the Health and Safety Code, §108.006(a)(9)(D). Department staff, many Texas children's hospitals staff members, staff from the National Association of Children's Hospitals and Related Institutions (NACHRI) and the Agency for Healthcare Research and Quality (AHRQ) methodology development team from Stanford University have worked diligently together to develop the methodology for the Pediatric Quality Indicator (PDI) report which places a major emphasis on the POA for the report. The PDI report provides information about the quality of care provided to children in a standardized comparative format that the public and health researchers can use to make informed healthcare decisions regarding children's services. The Secretary of the Department of Health and Human Services (DHHS) selected conditions for reporting POA and adopted rules and CMS provided exemptions for reporting POA for some facilities.

The finalized list of diagnoses or conditions required for submission of POA for CMS was published in the *Federal Register* on August 22, 2007 (72 Fed. Reg. 47202 - 47218 (2007)) titled Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Final Rule), after the proposed rules were approved by the State Health Services Council.

The CMS rules limited the requirement to only acute care facilities and only affect Medicare clients. Five of seven comments recommended that the department should exempt facilities to follow the CMS rules and restrict the submission to acute care

hospitals only. One commenter recommended that the department should only require the POA on those patients where the payer is CMS. Limiting the collection and reporting of POA from the facilities to the limited number of facilities and conditions that CMS selected for their purposes would not be cost effective for the state nor would such provide the data necessary to produce accurate quality of care reports for the public or other policy decision makers. The proposed rules by the commission did not provide for any exemptions to facilities other than those already exempted by Health and Safety Code, Chapter 108.

Comment: Concerning §421.8(c)(11)(IIII) and §421.9(d)(48), one commenter asked for clarification if POA was required to be submitted for all diagnoses.

Response: The commission agrees with the commenter. The proposed rule would have required POA to be submitted for all diagnoses. The department has removed the POA requirement in response to other comments and will study the issue further.

Comment: Concerning §421.2(a) and §421.9(d)(48), one commenter recommended that the department require data submission only on those patients that have the CMS specified diagnoses and conditions and are being billed to CMS instead of the requirement to report POA for all diagnoses (specifically those not listed by CMS) and for all patients (specifically those who are not covered or paid in part or in full by CMS).

Response: The commission disagrees with the commenter. The POA is relevant to all payers and all diagnoses and conditions and considered necessary for publicly reporting information about the quality of care provided in hospitals. The department is going to study this issue further and has made changes to the rules by removing the POA from the required data elements list and the list of data elements to be in the public use data file. No change was made as a result of this comment.

Comment: Concerning a date to begin data collection of POA and release of POA data in the public use data file, no date was specified in the preamble or the rules and two commenters recommended that the department should begin collection of POA with January 2008 discharges and one of the commenters recommended that the release of data occur beginning with first quarter 2009 discharges.

Response: The commission disagrees with the commenters regarding the beginning date for collection, because Health and Safety Code, §108.009(b), requires adoption of rules for new data elements at least 90 days before collection occurs. The department has removed the POA data collection and reporting requirement and will consider the commenters recommendation in its review of this situation. No change was made to the rules as a result of this comment.

Comment: Concerning §421.2(a), §421.8(c)(11)(IIII), and §421.9(d)(48), one commenter recommended that the department align the rules with the Medicare specifications and the ICD-9-CM (International Classification of Diseases, Ninth Revision, Clinical Modification) Official Guidelines for Coding and Reporting and reporting hospitals should be required to submit POA on principal and secondary diagnoses.

Response: The commission disagrees in part with the commenter. The statement addressing collection of POA for secondary diagnoses was included in the proposed preamble. Senate Bill 1931 (S. 1932) Deficit Reduction Act of 2005, 109th Congress, mandated the Secretary of DHHS by October 1, 2007 to select diagnosis codes associated with at least two conditions which have either a high cost or high volume or both. The coding of the condition may result in the assignment of a case to a diagnosis-related group that has a higher payment when the code is present as a secondary diagnosis and the code describes such conditions that could reasonably have been prevented through the application of evidence based guidelines. Since DHHS selected codes would relate to principal or secondary diagnoses, the proposed rules were intended to require reporting of POA or both.

CMS adopted rules which require POA on select conditions for their purposes exempt certain facilities from reporting, significantly differ from the requirements proposed by the Commission and department. The department has removed the POA requirement in the rules in response to other comments and will study this issue further.

Comment: Concerning §421.2(a) and §421.9(d)(48), one commenter recommended that there should be no exclusions for facilities on reporting POA as CMS has in its requirements.

Response: The commission disagrees. The department has removed the POA requirement in the rules in response to other comments so no exclusions are necessary. This recommendation will be considered in any proposals for collection of POA in the future.

Comment: Concerning §421.2(a) and §421.9(d)(48), one commenter recommended that the department should collect of POA on all patients regardless of the payer type.

Response: The commission disagrees because Health and Safety Code, §108.006(a)(9)(D) charges the department to report on "the quality and effectiveness of health care and access to health care for all citizens of this state" and will be considered in studying this issue. The department has removed the POA requirement in the rules in response to other comments and will consider this recommendation in any proposals for collection of POA in the future.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §108.006, §108.009, §108.010 and §108.011, which require the Executive Commissioner to adopt rules regarding which data elements are to be required for submission to the department and which data elements are to be released in a public use data file; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§421.8. Hospital Discharge Data Release.

(a) Department records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §108.010 and §108.013. Copies of such records may be obtained upon request and upon payment of user fees established by the department. The public use data file shall be available for public inspection during normal business hours. Discharge claims in the

original format as submitted to the department are not available to the public, are not stored at the department's office and are exempt from disclosure pursuant to Health and Safety Code, §108.010 and §108.013, and shall not be released. Likewise, patient and physician identifying data collected by the department through editing of hospital data shall not be released.

(b) Creation of codes and identifiers. The department shall develop the following codes and identifiers, as listed in paragraphs (1) - (2) of this subsection, required for creation of the public use data file and for other purposes.

(1) The executive director shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) The executive director shall create a process for assigning geographic identifiers to each discharge record.

(c) Creation of public use data file. The department will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1) - (11) of this subsection:

(1) delete patient, and insured name, Social Security Number, address and certificate data elements and any patient identifying information, if submitted; delete patient control and medical record numbers.

(2) convert patient birth date to age;

(3) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(4) convert procedure and occurrence dates to day of stay values;

(5) delete physician and other health professional names and numbers and assign a alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "attending" or "operating or other" on discharged patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by §108.011(i)(2) of the Health and Safety Code shall be five, unless the department determines that a higher cell size is required to protect the confidentiality of an individual patient or physician;

(8) convert all procedure codes to ICD codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add risk and severity adjustment scores utilizing an algorithm approved by the department;

(10) suppress admission source data at patient level when the admission type code represents "Newborn";

(11) data elements to be included in the public use data file:

(A) Discharge Year and Quarter

(B) Provider Name (Facility Name)

(C) THCIC Identification Number

(D) Facility Type Indicators

(E) Patient Sex/Gender

(F) Type of Admission

(G) Source of Admission

(H) Patient ZIP Code

(I) County Code

(J) Public Health Region Code

(K) Patient State

(L) Patient Status

(M) Patient Race

(N) Patient Ethnicity

(O) Claim Type Indicator Code

(P) Type of Bill

(Q) Encounter Indicator: This indicates whether more than one claim was used to create the encounter

(R) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted)

(S) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. Current version of ICD codes at the time data is submitted)

(T) Principal Procedure code (if applicable)(Current version of ICD codes at the time data is submitted)

(U) Other Procedure codes (Up to 24 procedure codes can be submitted and report Current version of ICD codes at the time data is submitted)

(V) Admitting Diagnosis (Current version of ICD codes at the time data is submitted)

(W) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted) up to 9 E-codes can be submitted and reported

(X) Day of Week Patient is admitted code (Sun. = 1, Mon. = 2, Tues. = 3, Wed. = 4, Thur. = 5, Fri. = 6, Sat. = 7)

(Y) Length of Stay

(Z) Age of patient

(AA) Day number of Principal Procedure (Calculated: Principal Procedure Date minus Admission/Start of Care Date)

(BB) Day number of Procedure (1) (Calculated: Procedure Date (1) minus Admission/Start of Care Date)

(CC) Day number of Procedure (2) (Calculated: Procedure Date (2) minus Admission/Start of Care Date)

(DD) Day number of Procedure (3) (Calculated: Procedure Date (3) minus Admission/Start of Care Date)

(EE) Day number of Procedure (4) (Calculated: Procedure Date (4) minus Admission/Start of Care Date)

(FF) Day number of Procedure (5) (Calculated: Procedure Date (5) minus Admission/Start of Care Date)

(GG) Major Diagnostic Category (MDC)

(HH) HCFA-DRG Code (Obtained from the 3M HCFA-DRG Grouper)

(II) APR-DRG Code (Obtained from 3M APR-DRG Grouper)

(JJ) Risk of Mortality Score (Obtained from 3M APR-DRG Grouper)

(KK) Severity of Illness Score (Obtained from 3M APR-DRG Grouper)

(LL) Uniform Physician Identifier assigned to Attending Physician

(MM) Uniform Physician Identifier assigned to Operating or Other Physician

(NN) Service unit indicator from which the patient received services

(OO) Accommodations Private Room Charges

(PP) Accommodations Semi-Private Charges

(QQ) Accommodations Ward Charges

(RR) Accommodations Intensive Care Charges

(SS) Accommodations Coronary Care Charges

(TT) Ancillary Service - Other Charges

(UU) Ancillary Service - Pharmacy Charges

(VV) Ancillary Service - Medical/Surgical Supply Charges

(WW) Ancillary Service - Durable Medical Equipment Charges

(XX) Ancillary Service - Used Durable Medical Equipment Charges

(YY) Ancillary Service - Physical Therapy Charges

(ZZ) Ancillary Service - Occupational Therapy Charges

(AAA) Ancillary Service - Speech Pathology Charges

(BBB) Ancillary Service - Inhalation Therapy Charges

(CCC) Ancillary Service - Blood Charges

(DDD) Ancillary Service - Blood Administration Charges

(EEE) Ancillary Service - Operating Room Charges

(FFF) Ancillary Service - Lithotripsy Charges

(GGG) Ancillary Service - Cardiology Charges

(HHH) Ancillary Service - Anesthesia Charges

(III) Ancillary Service - Laboratory Charges

(JJJ) Ancillary Service - Radiology Charges

(KKK) Ancillary Service - MRI Charges

(LLL) Ancillary Service - Outpatient Services Charges

(MMM) Ancillary Service - Emergency Service Charges

(NNN) Ancillary Service - Ambulance Charges

(OOO) Ancillary Service - Professional Fees Charges

(PPP) Ancillary Service - Organ Acquisition Charges

(QQQ) Ancillary Service - ESRD Revenue Setting Charges

(RRR) Ancillary Service - Clinic Visit Charges

(SSS) Total Charges - Accommodations

(TTT) Total Charges - Ancillary

(UUU) Total Non-Covered Accommodation Charges

(VVV) Total Non-Covered Ancillary Charges

(WWW) Total Charges

(XXX) Total Non-Covered Charges

(YYY) Encounter Identifier - a unique number for each encounter for the quarter

(ZZZ) Service Line Revenue Code

(AAAA) Service Line Procedure Code

(BBBB) HCPCS/HIPPS Procedure Code

(CCCC) HCPCS/HIPPS Procedure Modifiers (Up to 4 may be submitted and reported)

(DDDD) Service Line Charge Amount

(EEEE) Service Line Unit Code

(FFFF) Service Line Unit Count

(GGGG) Service Line Non-Covered Charge Amount

(HHHH) Patient Country (when address is not in United States of America and confidentiality can be maintained)

(d) Release of public use data files. The department shall release in an aggregate form, without uniform patient, physician or other health professional identifiers, public use data relating to hospitals described by the Health and Safety Code, §108.0025(1) that are not rural providers because they do not meet the requirements of §108.0025(2).

(e) The department will make available a public use data file on electronic, magnetic or optical media for each quarter:

(1) The department shall release public use data from hospitals that have certified the data as required by §421.7 of this title (relating to Certification of Discharge Reports). A hospital's failure to execute the certification form by the dates specified in §421.7(d) of this title, or elects to not certify the discharge encounter data shall not prevent the department from releasing the hospital's data if the department believes the data submitted is reasonably accurate and complete. The department may suppress for any quarter's data one or more data elements if deemed necessary to comply with provisions of the statutes. If an element is ordered suppressed by a judicial authority, the department may suppress the element.

(2) If additional discharge claims (not previously submitted as specified in §421.6(c)(4) of this title (relating to Acceptance of Discharge Reports and Correction of Errors), excluding replacement, adjustments and void/cancel discharge claims become available after the initial release of the public use data file for any quarter, the department will add the discharge claims, that are received on or prior to the date specified in §421.3(a)(1) of this title (relating to Schedule for Filing Discharge Reports) of the following quarter, to the public use data file and make the additional records available to the public.

(f) Texas State agencies that request data solely for internal use in accordance with Health and Safety Code, §108.012(b) shall abide by the data users agreement.

(g) The department shall establish procedures for screening all requests to assure that filling the request will not violate the provisions of Health and Safety Code, §108.013(c).

(h) The data elements specified for discharge reports in §421.9 of this title (relating to Discharge Reports--Records, Data Fields and Codes) do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(i) A public use data file which is specified by the requestor shall not be considered a "report issued by the department" as referenced in Health and Safety Code, §108.011(f).

(j) Requests for data files including data on one or more providers are matters of public record and copies of all requests shall be maintained by the department for two years from the date of receipt. The department shall make available on the department's Internet site and publish in the department's numbered letter for hospitals a summary of all requests received for public use data.

(k) With any public use data file prepared by the department, the department shall attach all comments submitted by providers, which relate to any data included in the file. The department shall also make these comments available at the department's offices and on the department's Internet site.

(l) A research data file may be released provided the following criteria are met:

(1) the department's Hospital Discharge Data Research Data File Request Form is completed and submitted to the department; and

(2) the requestor has made payment according to the department's fee schedule. The department's fee includes a non-refundable "Review of Request Fee"; and

(3) the Institutional Review Board reviews the research request and has determined the proposed research outcome can be achieved with the requested data; and

(4) the Institutional Review Board grants authorization to the request or restricts access to specified data elements determined to be inappropriate for the research proposal in accordance with §421.10 of this title (relating to Institutional Review Board); and

(5) the requestor agrees to dispose of the research data using authorized methods by the established end date stated on the written data release agreement, and

(6) the requestor has signed a written data release agreement.

§421.9. Discharge Reports--Records, Data Fields and Codes.

(a) Hospitals that have not obtained an exemption letter authorized by §421.5 of this title (relating to Exemptions from Filing Requirements) shall submit discharge reports, electronically in the file format for inpatient hospital bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI ASC X12N form 837 Health Care Claims (ANSI 837 Institutional Guide) transaction for institutional claims and/or encounters. ANSI updates this format from time to time by issuing new versions.

(b) The department will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the ANSI 837 Institutional Guide, the department has defined the following data elements shown in this subsection and as defined the location in the ANSI 837 Institutional Guide where each element is to be reported. Data element content, format and locations may change as federal and state legislative requirements change in regards to Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, is implemented.

(1) Patient race - This data element shall be reported at Loop 2010BA or 2010CA in the segment DMG05 as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/ Aleut, 2 = Asian or, Pacific Islander, 3 = Black , 4 = White and 5 = Other Race. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Loop 2300 in the segment NTE02 as a numeric value. Acceptable codes are 1 = Hispanic or Latino Origin and 2 = Not of Hispanic or Latino Origin. In order to obtain this data, the hospital staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the hospital staff is to use its best judgment to make the correct classification based on available data.

(3) Other E-codes - These additional E-codes (maximum of nine (9)) shall be reported in the following ANSI X12N Form 837 locations: Loop 2300, segments, HI05-2, HI06-2, HI07-2, HI08-2, HI09-2, HI10-2, HI11-2 and HI12-2. (The first E-code is reported in Loop 2300 segment HI04-2).

(4) THCIC Identification Number - This data element shall be submitted in data segment REF02 of Loop 2010AA or Loop 2010AB (in the Pay-to provider reported provided the services), or Loop 2310E (if the Service Facility Provider is submitted).

(d) Hospitals shall submit the required minimum data set for all patients for which a discharge claim is required by this title. The required minimum data set includes the following data elements as listed in this subsection:

(1) Patient Name

(A) Patient Last Name

(B) Patient First Name

(C) Patient Middle Initial

(2) Patient Address

(A) Patient Address Line 1

(B) Patient Address Line 2 (if applicable)

(C) Patient City

(D) Patient State

(E) Patient ZIP

(F) Patient Country (if address is not in United States of America, or one of its territories)

(3) Patient Birth Date

(4) Patient Sex

(5) Patient Race

(6) Patient Ethnicity

(7) Patient Social Security Number

(8) Patient Account Number

(9) Patient Medical Record Number

(10) Claim Filing Indicator Code (Payer Source - primary and secondary (if applicable for secondary payer source)

(11) Payer Name - Primary and secondary (if applicable, for both)

(12) National Plan Identifier - for primary and secondary (if applicable) payers (National Health Plan Identification number, if applicable and when assigned by the Federal Government)

(13) Type of Bill

(14) Statement Dates (replaces Statement From and Statement Thru dates)

(15) Admission / Start of Care

(A) Admission / Start of Care Date

(B) Admission / Start of Care Hour

(16) Admission Type

(17) Admission Source

(18) Patient (Discharge) Status

(19) Patient Discharge Hour

(20) Principal Diagnosis

(21) Admitting Diagnosis

(22) Principle External Cause of Injury (E-Code)

(23) Other Diagnosis Codes - up to 24 occurrences (all applicable)

(24) External Cause Of Injury (E-Code) - up to 9 occurrences (if applicable)

(25) Principal Procedure Code (if applicable)

(26) Principal Procedure Date (if applicable)

(27) Other Procedure Codes - up to 24 occurrences (if applicable)

(28) Other Procedure Dates - up to 24 occurrences (if applicable)

(29) Occurrence Span Code - up to 24 occurrences (if applicable)

(30) Occurrence Span Code Associated Date - up to 24 occurrences (if applicable)

(31) Occurrence Code - up to 24 occurrences (if applicable)

(32) Occurrence Code Associated Date - up to 24 occurrences (if applicable)

(33) Value Code - up to 24 occurrences (if applicable)

(34) Value Code Associated Amount - up to 24 occurrences (if applicable)

(35) Condition Code - up to 24 occurrences (if applicable)

(36) Attending Physician or Attending Practitioner Name

(A) Attending Practitioner Last Name

(B) Attending Practitioner First Name

(C) Attending Practitioner Middle Initial

(37) Attending Practitioner Primary Identifier (National Provider Identifier, when HIPAA rule is implemented)

(38) Attending Practitioner Secondary Identifier (Texas state license number or UPIN)

(39) Operating Physician or Other Practitioner Name (if applicable)

(A) Operating Physician or Other Practitioner Last Name

(B) Operating Physician or Other Practitioner First Name

(C) Operating Physician or Other Practitioner Middle Initial

(40) Operating Physician or Other Practitioner Primary Identifier (National Provider Identifier, when HIPAA rule is implemented)

(41) Operating Physician or Other Practitioner Secondary Identifier (Texas state license number or UPIN)

(42) Total Claim Charges

(43) Revenue Service Line Details (up to 999 service lines) (all applicable)

(A) Revenue Code

(B) Procedure Code

(C) HCPCS/HIPPS Procedure Modifier 1

(D) HCPCS/HIPPS Procedure Modifier 2

(E) HCPCS/HIPPS Procedure Modifier 3

(F) HCPCS/HIPPS Procedure Modifier 4

(G) Charge Amount

(H) Unit Code

(I) Unit Quantity

(J) Unit Rate

(K) Non-covered Charge Amount

(44) Service Provider Name

(45) Service Provider Primary Identifier - Provider Federal Tax ID (EIN) or National Provider Identifier (when HIPAA rule is implemented)

(46) Service Provider Address

(A) Service Provider Address Line 1

(B) Service Provider Address Line 2 (if applicable)

(C) Service Provider City

(D) Service Provider State

(E) Service Provider ZIP

(47) Service Provider Secondary Identifier - THCIC 6-digit Hospital ID assigned to each facility

(e) For patients which are covered by 42 USC 290dd-2 and 42 CFR Part 2.1, the hospital shall submit the following patient identifying information or default values in the specified Record and Field locations as required by subsection (a) of this section:

(1) Patient Account Number - This alphanumeric patient control number shall be reported. This number is unique to the institution and episode of care and will be used by the hospital to review and certify data.

(2) Last Name - The patient's last name shall be removed and replaced with "Doe".

(3) First Name - The patient's first name shall be removed and replaced with "Jane" if female, or "John" if male, and can include a sequential number (e.g., John1, John2, John3... etc.).

(4) Middle Initial - The patient's middle initial shall be removed and left blank (space filled).

(5) Date of Birth - The patient's date of birth shall be reported.

(6) Address - The patient's residence address shall be removed and replaced with the hospital's street address.

(7) City - The patient's city of residence shall be reported.

(8) State - The patient's state of residence shall be reported.

(9) ZIP Code - The patient's ZIP code of residence shall be reported.

(10) Medical Record Number - The patient's medical record number shall be removed and replaced with "99999" and reported.

(11) Social Security Number - The patient's Social Security Number shall be removed and replaced with "999999999".

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER NN. CONSUMER NOTICES FOR LIFE INSURANCE POLICY AND ANNUITY CONTRACT REPLACEMENTS

28 TAC §§3.9501 - 3.9506

The Commissioner of Insurance adopts new Subchapter NN, §§3.9501 - 3.9506, relating to the replacement of certain life insurance policies and annuity contracts. Sections 3.9503 - 3.9506 are adopted with changes to the proposed text published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7663). Section 3.9501 and §3.9502 are adopted without changes.

REASONED JUSTIFICATION. The new subchapter is necessary to fulfill the requirements of HB 2762, 80th Legislature, Regular Session, effective September 1, 2007, that the Commissioner adopt rules to accomplish and enforce the purpose of new Chapter 1114 of the Insurance Code and adopt or approve model documents to be used as consumer notices under the new chapter. As provided in §1114.001, Chapter 1114 was enacted to (i) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; (ii) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions; (iii) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; (iv) reduce the opportunity for misrepresentation and incomplete disclosure; and (v) establish penalties for failure to comply with the requirements adopted under Chapter 1114. The adopted notices provide consumers with important information regarding potential consequences resulting from life insurance policy or annuity contract replacement. This information is necessary to increase the likelihood of a consumer making a decision in their best interest and to reduce the opportunity for misrepresentation and incomplete disclosure.

On September 28, 2007, the Department posted an informal draft proposal of Subchapter NN on its website for a one week comment period. On October 26, 2007, the proposed new subchapter was published in the *Texas Register*. On November 12, 2007, the Department held a stakeholder meeting for interested parties, and a public hearing on the rule proposal was held on November 20, 2007. In response to comments received on the proposal published in the *Texas Register*, and comments received on the Department's preliminary response to comments received on the published proposal, as stated in the stakeholder meeting and public hearing, the Department has revised some of the proposed requirements in the published rule. Additionally, the Department has made a few minor technical changes to the proposed text that are not based on comments. None of the changes, however, introduce new subject matter or affect persons in addition to those subject to the proposal as published.

The Department received comments objecting to the proposed requirement in §3.9503 that the notices be reproduced without any change except as expressly allowed in the proposal. The National Association of Insurance Commissioners Life Insurance and Annuities Replacement Model Regulation (NAIC Replacement Model) allows for use of Commissioner-approved forms that are "substantially similar" to promulgated forms. However, HB 2762, which was based upon the NAIC Replacement Model, does not have a provision allowing for the use of substantially similar forms. Instead, HB 2762 requires that notices used under Chapter 1114 must be either adopted or approved by the Commissioner.

Commenters voiced concern that the proposed requirement that notices be reproduced without any change to the notices specified in the proposal is more restrictive than the standard in the NAIC Replacement Model allowing for the use of Commissioner-approved substantially similar forms. Commenters opined that this difference could have negative consequences to both industry and consumers. These commenters stated that adoption of the Department's proposal could cause industry disruption because forms currently in use in Texas on a voluntary basis, pursuant to the substantially similar standard, may not comply with the Department's proposed requirement that the NAIC Replacement Model notice text be reproduced without any change, except for omission of inapplicable references. Commenters fur-

ther stated that because the consumer notices under Insurance Code Chapter 1114 must be used beginning January 1, 2008, insurers would be unable to make changes to forms currently in use on such a short timeline, and as a result, would have to suspend business subject to the provisions of Chapter 1114 until such changes could be implemented.

One commenter also asserted that the proposed requirement that notices be reproduced without change may have negative consequences for consumers. The commenter stated that some replacement notices currently in use go beyond the NAIC Model Replacement notice in the scope and category of questions, and that prohibiting such notices could decrease the likelihood of a consumer making a fully informed decision regarding replacement.

After considering these comments, the Department has revised the proposal in §§3.9503 - 3.9506 to allow insurers to file a notice with the Department for Commissioner review and approval that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). The adopted rules provide for the Commissioner's review and approval of a form filed with the Department, if, in the Commissioner's opinion, the filed notice protects the rights and interests of consumers to at least the same extent as the corresponding promulgated notice in the adopted rule. It is the Department's position that by requiring Commissioner review and approval of forms before use, the goal of consumer protection can still be achieved while allowing the industry the flexibility necessary to conduct business unimpeded. Therefore, the adopted rules allow for the filing, review, approval, and use of forms that are substantially similar to the forms specified in adopted Figure: 28 TAC §3.9504(b) and Figure: 28 TAC §3.9505(1) in §§3.9503 - 3.9506. Adopted §3.9503(b), however, requires insurers to use the notice in Figure: 28 TAC §3.9505(2) for direct response applicants not intending replacement or failing to answer an insurer's inquiry regarding replacement and does not allow insurers to file a notice that is substantially similar to that figure.

Commenters also voiced concern that the short time period between the adoption date of the rule and the date insurers must begin using consumer notices to comply with Chapter 1114 of the Insurance Code (January 1, 2008), would be insufficient for the Commissioner to review filed consumer notices and for the insurer to make any required changes. Commenters requested that the Department consider allowing permanent usage of consumer notices that were filed with the Department on an informational basis under 28 TAC §3.5(b)(1) before the adoption of this subchapter. Another commenter requested that the Department consider waiving filing requirements of substantially similar notices until April 1, 2008, while another commenter requested that the Department waive all notice requirements until April 1, 2008.

The Department's position is that a consumer notice filed with the Department on an informational basis does not satisfy the requirement of Insurance Code §1114.006 that the Commissioner adopt or approve consumer notices for use under Chapter 1114, because informational filings are not approved by the Commissioner. Waiving filing requirements for substantially similar consumer notices, or waiving all requirements relating to notices until April 1, 2008, would not comply with the effective date of January 1, 2008, required by HB 2762.

However, the Department agrees that the short time period between the rule adoption date and the date insurers must begin using consumer notices to comply with Chapter 1114 poses a challenge to insurers choosing to use a notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). To address this issue, the Department has adopted a three-tiered filing approach for substantially similar consumer notices in adopted §3.9506.

In the time period beginning with the effective date of Subchapter NN and ending on January 31, 2008, an insurer may immediately use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) after filing it with the Department. The Commissioner will review the filed consumer notice and notify the insurer whether the consumer notice is approved or disapproved. If approved, the insurer may continue to use the approved notice unless and until such time as the Commissioner withdraws approval. If disapproved, the insurer must stop using the consumer notice, but may refile the corrected form as specified in §3.9506. Effective February 1, 2008, insurers must receive approval before use of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). Effective April 1, 2008, an insurer must file a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) no later than the 60th day before use of the consumer notice, consistent with the filing timeline for forms subject to review as specified in Insurance Code §1701.051(b). The three-tiered filing approach will allow insurers using a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) to continue its use uninterrupted, but will also allow the Commissioner to review and approve consumer notices as required by Insurance Code Chapter 1114, and will provide sufficient time for a thorough review of filed consumer notices.

The Department received numerous comments on the consumer advisory notice required by proposed §3.9506. Although one commenter strongly supported the inclusion of the consumer advisory notice and suggested that it be also required for direct response applicants not intending replacement, other commenters stated that the consumer advisory was unnecessary because it simply restated information in the NAIC Replacement Model notice. Commenters stated that the language in the advisory was potentially misleading or confusing to consumers and that the use of the consumer advisory notice would contribute to a lack of uniformity among the states.

While the Department strongly disagrees that the language in the proposed consumer advisory notice was confusing or misleading, the Department agrees that the advisory restated some information provided in the NAIC Replacement Model notice and has agreed to delete the consumer advisory notice requirement in the adoption. The purpose of the consumer advisory notice was to provide important information in a clear, concise, and direct manner. When considering whether a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) protects the rights and interest of consumers to the same extent as the corresponding consumer notices promulgated in Subchapter NN, the Commissioner will review filed notices for compliance with the goals of simplicity, clarity, and import exemplified by the proposed consumer advisory notice. Additionally, the Department will continue to place a high importance on these concepts and standards when considering any rule proposals on

suitability of agent or insurer recommendations to consumers relating to life insurance or annuity sales.

Three minor technical changes to the proposed text have been made by the Department for clarification and consistency that are not based on comments. In the published proposal in Figure: 28 TAC §3.9504(b), the Department proposed the consumer notice to be identical to the notice in the NAIC Replacement Model for insurers using agents. However, the published proposal inadvertently varied from the NAIC Replacement Model by using the term "agent" rather than "producer" in two instances and omitting the phrase "if there is one" on the third line of text in the notice for use with insurers using agents specified by Figure: 28 TAC §3.9504(b). Figure: 28 TAC §3.9504(b) is adopted with these changes in order to clarify the notice to the text of the corresponding notice in the NAIC Replacement Model. Also, information has been added to adopted §3.9503 to notify insurers of the availability of the promulgated consumer notices at the Department's website or upon request through mail. None of the changes, however, introduce new subject matter or affect persons in addition to those subject to the proposal as published.

HOW THE SECTIONS WILL FUNCTION.

Adopted §3.9501 states the purpose of the subchapter.

Adopted §3.9502 specifies that the terms "agent" and "producer" shall have the same meanings when used in the subchapter and defines those terms.

Adopted §3.9503 specifies the content and format requirements for the consumer notices specified in the subchapter. Adopted §3.9503(a) details the formatting and content requirements for the text in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2), and provides that references must be without any change except as specified in §3.9503(b), (c), or (d). Adopted §3.9503(b) specifies that the Commissioner shall approve a notice for use under the subchapter that is substantially similar to the text contained in Figure: 28 TAC §3.9504(b) for insurers using agents or Figure: 28 TAC §3.9505(1) for direct response applicants intending replacement if, in the Commissioner's opinion, the notice protects the rights and interest of applicants to at least the same extent as the corresponding notice adopted in the subchapter. Section 3.9504(b) also prohibits an insurer from filing a consumer notice that is substantially similar to the form specified in Figure: 28 TAC §3.9505(2) for direct response applicants not intending replacement or failing to answer an insurer's inquiry regarding replacement. Adopted §3.9503(c) specifies that Commissioner approval of a notice is not required if a notice promulgated under Subchapter NN or a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) approved pursuant to §3.9506 is used, and amendments to the notice are limited to the omission of a reference not applicable to the product being sold or replaced. Section 3.9503(c) specifies that a reference in a required notice is presumed applicable if it could be applicable under any circumstances and therefore may not be omitted from the required notice. Section 3.9503(d) specifies that an insurer may add a company name and identifying form number to notices required under the subchapter without obtaining commissioner approval. Adopted §3.9503(e) specifies that the notices contained in the subchapter may be obtained from the Department's website, or upon request from the Department by mail.

New §3.9504 addresses the consumer notice regarding life insurance policy and annuity contract replacements that is to be used for insurers using agents. Section 3.9504(a) requires an agent initiating an application for a life insurance policy or annuity contract to submit information to the insurer on whether an applicant for a life insurance policy or annuity contract has existing policies or contracts. New §3.9504(b) specifies the conditions that require the use of the consumer notice specified in Figure: 28 TAC §3.9504(b) or approved consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) and the procedures for providing the consumer notice to the applicant. Adopted Figure: 28 TAC §3.9504(b) specifies the text of the notice for insurers using agents.

Adopted §3.9505 regulates notices required in direct response sales governed by Insurance Code Chapter 1114. Section 3.9505 requires insurers to inquire whether an applicant applying in response to a direct response solicitation intends to replace, discontinue, or change an existing policy or contract. New §3.9505(1) requires that if the insurer proposed the replacement or if the applicant responds that they intend a replacement, the insurer must send an applicant the notice specified in Figure: 28 TAC §3.9505(1) or a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9505(1). New Figure: 28 TAC §3.9505(1) contains the text of the promulgated notice.

Adopted §3.9505(2) requires that if the applicant states a replacement is not intended or fails to respond to the insurer's inquiry regarding the applicant's replacement intention, the insurer must send the notice specified in Figure: 28 TAC §3.9505(2). New Figure: 28 TAC §3.9505(2) contains the text of the promulgated notice. The consumer notices promulgated in 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2) are taken verbatim from the NAIC Replacement Model.

Adopted §3.9506 specifies the filing procedures for a consumer notice that is substantially similar to Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). Adopted §3.9506 specifies that beginning on the effective date of Subchapter NN and ending January 31, 2008, an insurer may use such a notice immediately after filing it with the Department, and that an insurer making such a filing will receive a notice advising them whether the filing has been approved or disapproved. Adopted §3.9506(1) specifies that an insurer that files a notice substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) beginning on the effective date of Subchapter NN, and ending January 31, 2008, and that receives a notice of approval from the Commissioner may continue to use the approved consumer notice unless and until such time as the Commissioner withdraws approval of the consumer notice. Adopted §3.9506(a)(2) specifies that an insurer who has filed a notice substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) beginning on the effective date of Subchapter NN, and ending January 31, 2008, that receives a notice of disapproval from the Commissioner must stop use of the consumer notice, but may refile the notice subject to the requirements of 28 TAC §3.5(b)(6).

Adopted §3.9506(b) specifies that effective February 1, 2008, an insurer subject to Insurance Code Chapter 1114 may not use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) until it has been approved. Adopted

§3.9506(b)(1) specifies that effective February 1, 2008, an insurer subject to Chapter 1114 that uses agents must either use the text of the notice promulgated in Figure: 28 TAC §3.9504(b), which is not subject to filing and approval, or a substantially similar consumer notice which has been approved. Adopted §3.9506(b)(2) specifies that effective February 1, 2008, in the case of a direct response applicant, an insurer subject to Chapter 1114 must either use the text of the notice promulgated in Figure: 28 TAC §3.9505(1), which is not subject to filing and approval, or a substantially similar consumer notice which has been approved.

Adopted §3.9506(c) specifies that effective February 1, 2008, a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) must be filed with the Department in accordance with the filing submission requirements of 28 TAC §3.4 (relating to General Submission Requirements); that a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) is subject to the same standards and procedures as a filing made under 28 TAC §3.5(a)(1) (relating to Filing Authorities and Categories), and will be processed by the Department according to the procedures specified in 28 TAC §3.7 (relating to Form Acceptance and Procedures); and that a consumer notice disapproved by the Commissioner is subject to the requirements of §3.5(b)(6).

Adopted §3.9506(d) specifies that effective April 1, 2008, insurers who elect to use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) shall file the notice no later than the 60th day before use. Adopted §3.9506(d) specifies that a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) is subject to Insurance Code §1701.054. Adopted §3.9506(d) also specifies that insurers that have filed and received approval of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) before April 1, 2008, may continue to use the approved notice after April 1, 2008.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Substantially Similar Consumer Notices

Comment: Several commenters requested that the Department consider allowing notices that are substantially similar to the notices promulgated in the subchapter for insurers using agents and direct response applicants intending replacement. Commenters stated that forms currently in use in Texas on a voluntary basis that satisfy the NAIC Replacement Model would fail the Department's requirement in proposed §3.9503 that the promulgated notices be reproduced without change unless expressly authorized in the rule, and would result in a disruption of insurer business. Commenters also stated that the requirement in proposed §3.9503 that notices not be changed could result in consumer harm by prohibiting alternate similar notices that exceeded the NAIC Replacement Model notices in scope and category of questions.

Agency Response: The Department agrees that the proposal varied from the standard in the NAIC Replacement Model and that the variation could have a negative effect. While the NAIC Replacement Model allows for the use of Commissioner-approved forms that are "substantially similar" to promulgated forms, neither HB 2762, which was based upon the NAIC Replacement Model, nor the Department's proposal contained a provision for the use of substantially similar forms. Instead, HB 2762 requires that notices used under Chapter 1114 must be either adopted or approved by the Commissioner. Based upon the comments, the Department believes that allowing the use of substantially similar forms for insurers using agents and for direct response applicants intending replacement is necessary to allow insurers to continue conducting business without interruption. The Department's position is that the goal of consumer protection can be achieved by requiring that substantially similar forms be filed with the Department for Commissioner review. Therefore, the Department has revised the rule as adopted to allow for the alternative of an insurer filing of a consumer notice that is substantially similar to the forms specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) for Commissioner review and approval. The Commissioner shall approve a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) if, in the opinion of the Commissioner, the consumer notice protects the rights and interests of the applicant to the same extent as the corresponding notice promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1).

Comment: The Department received a request for a description of the approval process that will be used if a company files and begins using a substantially similar form in the period beginning with the effective date of Subchapter NN and ending with January 31, 2008, and the Commissioner subsequently disapproves the filing.

Agency Response: A consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) filed with the Department will be subject to the same acceptance and rejection procedures as other filings subject to review as specified in 28 TAC §3.7. A disapproved filing may be resubmitted for review and approval as specified in 28 TAC §3.5(b)(6). Any notices that have been filed in the period beginning with the effective date of Subchapter NN and ending with January 31, 2008, and that are in use by an insurer will have to be corrected as specified in 28 TAC §3.7(d) upon disapproval. These procedures are specified in adopted §3.9506(c).

Comment: The Department received inquiries as to whether a change in the bolding effects to the NAIC Replacement Model notice or the insertion of text notifying an applicant of their right to return and refund within the NAIC Replacement Model notice would necessitate filing a notice as a substantially similar form under the requirements of Subchapter NN.

Agency Response: Any change not expressly allowed in the rule to the consumer notices promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) will require a filing under adopted §3.9506, including a change in bolding effects, or the insertion of additional text within the NAIC Replacement Model notice.

Implementation of Consumer Notice Requirements

Comment: Commenters raised concerns that the short time period between the adoption date of the rule and the date insurers must begin using consumer notices to comply with Chapter 1114 of the Insurance Code (January 1, 2008), would be insufficient for the Commissioner to review filings and for the insurer to make any required changes. The Department received a request to al-

low insurers to continue to use on a permanent basis consumer notices that were filed on an informational basis before the adoption of this subchapter. Another commenter requested that the Department consider waiving filing requirements for substantially similar notices until April 1, 2008, while another asked that the Department waive all notice requirements until April 1, 2008.

Agency Response: The Department agrees that the short time period between the adoption date of the rule and the required compliance date may pose difficulty for an insurer electing to use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) rather than a promulgated notice specified in the rule. However, the Department's position is that a consumer notice previously filed on an informational basis does not satisfy the requirement of Insurance Code §1114.006 that the Commissioner adopt or approve consumer notices for use under Chapter 1114, because informational filings are not considered approved by the Commissioner. The Department has also considered the request to waive notice requirements until April 1, 2008, but does not agree that such a waiver would be consistent with the January 1, 2008 effective date for Chapter 1114 specified by HB 2762.

To address the concerns raised by the commenters, the Department has specified a three-tiered filing approach in adopted §3.9506. In the time period beginning with the effective date of Subchapter NN and ending on January 31, 2008, an insurer may immediately use a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) after filing it with the Department. The Commissioner will review the filed consumer notice and notify the insurer whether the consumer notice is approved or disapproved. If approved, the insurer may continue to use the approved notice unless and until such time as the Commissioner withdraws approval. If disapproved, the insurer must stop using the consumer notice, but may refile the corrected form as specified in §3.9506.

Effective February 1, 2008, insurers must receive approval of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) before use. Effective April 1, 2008, an insurer must file a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) no later than the 60th day before use of the consumer notice, consistent with the filing timeline for forms subject to review as specified in Insurance Code §1701.051(b).

The three-tiered filing approach will allow insurers using a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) to continue its use without interruption, but will also allow the Commissioner to review and approve forms as required by Insurance Code Chapter 1114 and will provide sufficient time for a thorough review of filed notices.

Texas Department of Insurance Consumer Advisory

Comment: The Department received numerous comments on the consumer advisory notice required by proposed §3.9506. Although one commenter strongly supported the inclusion of the consumer advisory notice and suggested that it should also be required for direct response applicants not intending replacement, other commenters stated that the consumer advisory was unnecessary because it simply restated information in the NAIC Replacement Model notice. Commenters stated that the language in the advisory was potentially misleading or confusing to consumers and one commenter suggested alternate wording to the consumer advisory notice. Another commenter asked whether subsequent filings would be required when an insurer supplemented an approved consumer notice with the consumer advisory notice. Another commenter stated that Texas has actively participated in the NAIC for many years in an effort to achieve uniformity in state regulation, and that the use of the proposed consumer advisory notice in addition to the NAIC Replacement Model notice was inconsistent with Texas' support of the NAIC Replacement Model when it was adopted in 1998.

Agency Response: While the Department strongly disagrees that the language in the proposed consumer advisory notice was confusing or misleading, the Department agrees that the advisory restated some information provided in the NAIC Replacement Model notice and has agreed to delete the consumer advisory notice requirement in the adoption. The purpose of the consumer advisory notice was to provide important information in a clear, concise and direct manner that would be easy for a consumer to understand. The Department is convinced that the manner of presentation of this critical information is as important to the consumer in determining whether to replace existing policies or contracts as the information itself. Therefore, when considering whether a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) filed with the Department protects the rights and interest of consumers to the same extent as the corresponding promulgated consumer notice, the Commissioner will review filed notices for compliance with the goals of simplicity, clarity and import exemplified in the proposed consumer advisory notice. Additionally, the Department will continue to place a high importance on these concepts and standards when considering any rule proposals on agent or insurer suitability of recommendations to consumers relating to life insurance or annuity sales.

Consumer Notice for Direct Response Applicants Intending Replacement

Comment: One commenter requested that the notice specified in proposed Figure: 28 TAC §3.9505(2) for direct response applicants intending replacement be amended to have a checkbox for applicants that wish for the insurer to send a copy of the signed notice back to the applicant.

Agency Response: The Department does not agree that the checkbox is necessary because a direct response applicant may make a copy of the signed notice for themselves before sending the signed notice to an insurer.

Right to Return and Receive Refund on Policy or Contract

Comment: A commenter recommended that the Department add a section to the rules to address an owner's right to return the policy or contract within 30 days and receive an unconditional full refund. The commenter asked that the rules require an insurer to include the notice addressing returns at the time the policy is delivered and require agents who deliver policies to verbally inform consumers of their right to return and refund.

Agency Response: The Department's interpretation of Insurance Code §1114.053(e) is that it requires replacing insurers using agents to deliver a notice of the 30-day right to return and refund at the time of policy or contract delivery. The use of the word "owner" rather than "applicant" in §1114.053(e) indicates that the delivery is to occur at the time of delivery, rather than

at the time of application. This statutory requirement is not reiterated in the rule. Section 1114.053(g) authorizes the Commissioner to require by rule that insurers also provide the 30-day notice at the time of application. However, at this time, the Department's position is that requiring insurers to provide two copies of the 30-day notice is not of sufficient benefit to consumers to necessitate such a requirement.

The Department also does not agree with the commenter regarding the necessity of requiring by rule that agents who deliver policies verbally inform owners of the 30-day right to refund and return. The Department's position, at this time, is that the requirement in §1114.053(g) that the written notice be given at the time of policy or contract delivery is sufficient.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: None.

For with changes: Texas Office of Insurance Public Counsel.

Against: None.

Neither for nor against, with recommended changes: Primerica; American Council of Life Insurers; National Association of Insurance and Financial Advisors-Texas; and Texas Association of Life & Health Insurers.

STATUTORY AUTHORITY. The new sections are adopted under the Insurance Code §§1114.006, 1114.007, and 36.001. Section 1114.006 requires that the Commissioner by rule adopt or approve model documents to be used for consumer notices under Chapter 1114. Section 1114.007 authorizes the Commissioner to adopt reasonable rules in the manner prescribed by Insurance Code, Subchapter A, Chapter 36, to accomplish and enforce the purpose of Chapter 1114.

As provided in §1114.001, Chapter 1114 was enacted to (i) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities; (ii) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions; (iii) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made; (iv) reduce the opportunity for misrepresentation and incomplete disclosure; and (v) establish penalties for failure to comply with the requirements adopted under Chapter 1114.

Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

§3.9503. Consumer Notice Content and Format Requirements.

(a) The text contained in Figure: 28 TAC §3.9504(b), Figure: 28 TAC §3.9505(1) and Figure: 28 TAC §3.9505(2) must be in at least 10 point type and presented in the same order as indicated in each figure and without any change to the specified text, including bolding effects, except as provided in subsections (b), (c), and (d) of this section.

(b) Pursuant to §3.9506 of this subchapter (relating to Filing Procedures for Substantially Similar Consumer Notices), in lieu of using the notices contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1), an insurer may file a notice with the department that is substantially similar to the text contained in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) for review and approval by the commissioner. The commissioner shall approve the notice if, in the commissioner's opinion, the notice protects the rights and interests of applicants to at least the same extent as the notices adopted in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1). An insurer required to send the notice specified in Figure: 28 TAC §3.9505(2) may not file a notice that is substantially similar to that figure for review and approval by the commissioner.

(c) Commissioner approval of a notice is not required if a notice promulgated or approved under this subchapter is used and amendments to that notice are limited to the omission of references not applicable to the product being sold or replaced. For purposes of this subchapter, a reference in any notice required under this subchapter to a product that is being sold or replaced is applicable if the reference could be applicable under any possible circumstances and therefore may not be omitted from the required notice.

(d) An insurer may add a company name and identifying form number to notices specified under this subchapter without obtaining commissioner approval.

(e) The promulgated forms specified in this subchapter are available upon request from the Life, Health & Licensing Division, MC 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9107 or 333 Guadalupe, Austin. Texas 78701, or by accessing the department website at www.tdi.state.tx.us.

§3.9504. Consumer Notice Regarding Replacement for Insurers Using Agents.

(a) An agent who initiates an application for a life insurance policy or annuity contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing life insurance policies or annuity contracts.

(b) If the applicant states that the applicant does have existing policies or contracts, the agent shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacement that contains the text contained in Figure: 28 TAC §3.9504(b), or substantially similar notice filed with the department and approved under this subchapter. The notice shall be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud, in which case the agent is not required to read the notice aloud.

Figure: 28 TAC §3.9504(b)

§3.9505. Direct Response Consumer Notices.

In the case of a life insurance or annuity application initiated as a result of a direct response solicitation, the insurer shall inquire whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing life insurance policy or annuity contract. The inquiry may be included with, or submitted as a part of, each completed application for such policy or contract.

(1) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall send a notice that contains the text in Figure: 28 TAC §3.9505(1), or a substantially similar notice filed with the department and approved under this subchapter.

Figure: 28 TAC §3.9505(1)

(2) If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a new policy or contract notice that contains the statements in Figure: 28 TAC §3.9505(2).

Figure: 28 TAC §3.9505(2)

§3.9506. Filing Procedures for Substantially Similar Consumer Notices.

(a) Beginning with the effective date of this subchapter and ending January 31, 2008, an insurer subject to Insurance Code Chapter 1114 may use a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) immediately after filing the consumer notice with the department. An insurer who has filed a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) in the period of time beginning with the effective date of this subchapter and ending on January 31, 2008, will receive a notice of approval or disapproval of the consumer notice from the commissioner.

(1) An insurer who has filed a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) in the period of time beginning with the effective date of this subchapter and ending on January 31, 2008, who receives a notice of approval from the commissioner may continue to use the approved consumer notice unless and until such time as the commissioner withdraws approval of the notice.

(2) An insurer who has filed a consumer notice that is substantially similar to the text promulgated in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) in the period of time beginning with the effective date of this subchapter and ending on January 31, 2008, who receives a notice of disapproval from the commissioner shall stop using the consumer notice, but may refile the notice subject to the requirements of §3.5(b)(6) of this chapter (relating to Filing Authorities and Categories).

(b) Effective February 1, 2008, an insurer may not use, issue, or deliver a notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) until it has been approved.

(1) Effective February 1, 2008, an insurer subject to Insurance Code Chapter 1114 using agents must either use the text of the notice contained in Figure: 28 TAC §3.9504(b), which is not subject to filing and approval, or a consumer notice substantially similar to the text contained in Figure: 28 TAC §3.9504(b) which has filed under this section and approved.

(2) Effective February 1, 2008, in the case of an applicant responding to a direct response solicitation, an insurer subject to Insurance Code Chapter 1114 must either use the text contained in Figure: 28 TAC §3.9505(1), which is not subject to filing and approval, or a consumer notice substantially similar to the text contained in Figure: 28 TAC §3.9505(1) which has been filed under this section and approved.

(c) Effective February 1, 2008, a filing of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) must be filed in accordance with the submission requirements of §3.4 of this chapter (relating to General Submission Requirements), and is subject to the same standards and procedures as a filing made under §3.5(a)(1) of this chapter. A filing of a consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) will be processed according to the procedures specified in §3.7 of this chapter (relating to Form Acceptance and Procedures). A consumer notice that is disapproved by the commissioner is subject to the requirements of §3.5(b)(6) of this chapter.

(d) Effective April 1, 2008, insurers subject to Chapter 1114 who elect not to use a consumer notice specified in this subchapter shall file a notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) no later than 60 days prior to use. A consumer notice that is substantially similar to a promulgated consumer notice specified in Figure: 28 TAC §3.9504(b) or Figure: 28 TAC §3.9505(1) filed after April 1, 2008, is subject to Insurance Code §1701.054 (relating to approval of forms). Insurers that have filed and received approval of a consumer notice before April 1, 2008, may continue to use the approved consumer notice unless and until such time as the commissioner withdraws approval of the notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706177
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 27, 2007
Proposal publication date: October 26, 2007
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER E. HEALTH FACILITY FEES

28 TAC §134.402

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts amendments to §134.402 concerning Ambulatory Surgical Center (ASC) Fee Guideline. The amended section is adopted without changes to the proposed text as published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7667).

These adopted amendments are necessary to maintain the stability of the ASC reimbursement rates during the period the Division develops a new ASC fee guideline in order to address new changes in Medicare's ASC reimbursement methodology.

These adopted amendments do not apply to political subdivisions with contractual relationships under Labor Code §504.053(b)(2).

Labor Code §413.011 and §413.0511(b)(1), of the Texas Workers' Compensation Act (Act) require the Division to adopt health care reimbursement policies and guidelines that are:

(1) developed in consultation with the Division Medical Advisor;

(2) the most current reimbursement methodologies, models, values, or weights used by the Centers for Medicare and Medicaid Services (CMS) in order to achieve standardization;

(3) fair and reasonable; and

(4) designed to ensure the quality of medical care; and achieve effective medical cost control.

The current version of §134.402 was based on the Medicare ASC reimbursement methodology in place at the time. That methodology established a set payment amount for each type of facility service that CMS determined would be reimbursed in an ASC setting. These services were divided into nine specific categories or ASC groups.

The reimbursement levels and fee guideline established in current §134.402 use the Medicare reimbursement structure as a baseline, or reference point, for the maximum allowable reimbursement calculations for services provided in an ASC health care facility.

However, the ASC fee guideline was not based solely on the Medicare reimbursements. Commercial market payments were also considered. The adoption of the ASC payment adjustment factor (PAF) of 213.3% was based upon due consideration of all of the statutory requirements for fee guidelines.

At the time of the adoption of the Division's ASC fee guideline, outpatient hospital and ASC payments were not standardized in the Medicare system, or in the market in general.

Beginning in January of 2008, Medicare's new ASC fee schedule will move toward standardizing the reimbursement methodologies of outpatient hospital and ASC facilities by changing the ASC methodology to be more like that of the outpatient hospital reimbursement methodology.

Medicare's new ASC fee schedule will incorporate relative payment weights for groups of procedures with similar resource and clinical characteristics, based on the Ambulatory Payment Classifications that are key elements of the Medicare Outpatient Prospective Payment System. The list of procedures eligible for payment under the Medicare ASC payment system will be greatly expanded. In the Medicare system, reimbursement for high cost devices and surgically implanted devices will be included in the procedure reimbursement amount. This is a significant change, and the current PAF in §134.402 is not compatible with this new methodology.

Currently, §134.402 provides for ASCs to be paid at 213.3% of the Medicare ASC reimbursement amount. In addition, §134.402 requires surgically implanted devices to be reimbursed separately at the amount actually paid for the device by the ASC.

Section 134.402 currently provides that coding, billing, reporting, and reimbursement of ASC facility services covered by the rule are to be accomplished by applying the Medicare policies in effect on the date a service is provided. This provision was included to prevent the Texas workers' compensation system from falling out of synchronization with Medicare and to achieve the standardization goals established in §413.011 of the Act.

However, with the significant changes in Medicare's ASC reimbursement system, if this provision of §134.402 remains in place, the result will be application of the 213.3% payment adjustment factor to the new Medicare ASC reimbursement system.

In some instances, this may result in unreasonable reimbursements. If 213.3% is applied to the new methodology, the reimbursement for some typical workers' compensation ASC services would range between 199% to 362% of 2007 Medicare rates.

Reimbursement for CPT code 64476 (injection to the lumbar or sacral area, each additional level), could decrease from $710 to $663, or 199% of 2007 Medicare rates; and reimbursement for CPT code 29826 (shoulder arthroscopy), could increase from $1,088 to $1,848, or 362% of 2007 Medicare rates.

Some reimbursements for surgically implanted device intensive procedures would increase up to 5,709% of the 2007 Medicare rates. For example, reimbursement for CPT code 61886 (implant of neurostimulator arrays), could increase from $1,088 to $29,114, or 5,709% of 2007 Medicare rates. Additional separate reimbursement of implantables as currently required by §134.402 would push this rate even higher.

The new reimbursement differentials could lead to shifting sites of service for financial rather than clinical reasons to the detriment of injured employees and the Texas workers' compensation system overall.

The Division needs time to reevaluate all of the data and information and to analyze the effects of the new Medicare ASC reimbursement methodology on workers' compensation reimbursements. This will allow the Division to make the appropriate recommended transition to the new Medicare reimbursement methodology for ASCs. The ASC fee guideline can then be integrated into the Texas workers' compensation system in a manner that provides reasonable reimbursement for all services in the system.

The adopted rule amendments will continue the use of reimbursement structures and amounts at the Medicare ASC 2007 rates for services provided on January 1, 2008 through August 31, 2008. This will maintain the stability of the ASC reimbursement rates during the period a new ASC fee guideline utilizing the new Medicare ASC methodology is being developed and assure system participants of a timeline for implementation of the new Medicare methodologies. The adopted amendment to §134.402(a)(2) states that the section shall not apply to facility services provided by an ASC on or after September 1, 2008.

The adopted amendments to §134.402(a)(3) change a reference from "Texas Workers' Compensation Commission (commission)" to "Texas Department of Insurance, Division of Workers' Compensation (Division)" and changes "commission" to "Division."

The adopted amendment to §134.402(a)(4) adds the words "except as provided in subsection (b) of the section" to a provision in the paragraph that requires use of revised Medicare components for compliance with the section.

The adopted amendment to subsection (a)(4) also changes "commission" to "Division."

The adopted amendments to §134.402(b) insert the word "and" between the words "billing" and "reporting," and also removes the words "and reimbursement."

The adopted amendment to subsection (b) also removes the words "reimbursement methodologies, models, and values or weights including its" and the word "payment." The adopted amendment to subsection (b) also adds the requirement that, for reimbursement of facility services covered in the rule, Texas workers' compensation system participants shall apply the reimbursement provisions of the section and the Medicare program reimbursement methodologies, models, and values or weights that were in effect on the earlier of the date a service is provided or December 31, 2007.

The adopted amendment to §134.402(e)(3)(D) changes "commissioner" to "Division."

The adopted amendments to §134.402(f) change a reference from "§133.302 and §133.303 of this title (relating to Preparation for an Onsite Audit and Onsite Audits)" to "§133.230 of this title (relating to Insurance Carrier Audit of a Medical Bill)" and changes the reference to §133.307 of this title from "(relating to Medical Dispute Resolution of a Medical Fee Dispute)" to "(relating to MDR of Fee Disputes)."

Comment: Several commenters supported the proposal to freeze the Ambulatory Surgical Center (ASC) reimbursement methodology and rates based on the Medicare system in effect on December 31, 2007. Agency Response: The Division appreciates the support.

Comment: A commenter stated that the system would be better served by "getting it right," and suggested deletion of the September 1, 2008 date in the rule. Agency Response: The Division agrees that it is important to make appropriate rule amendments; however, the Division declines to make the change. Although time is needed to reevaluate all of the data and information, and to analyze the effects of the new Medicare ASC reimbursement methodology on workers' compensation reimbursements, the Division's proposed plan is to accomplish the appropriate transition to the new Medicare reimbursement methodology by September 1, 2008. In addition, by establishing a specific timeline, workers' compensation system participants are able to plan ahead for the necessary adjustments.

Comment: Several comments were made relating to recommendations for future rulemaking on ASC reimbursement methodology and rates. The comments urged the Division to immediately proceed with development of a permanent rule, to form an ASC Fee Guideline Workgroup, to be careful to follow CMS and Texas Legislative standards when drafting the permanent ASC rule, to build on the outpatient hospital fee guideline reimbursement structure, to be aware that Medicare reimburses ASC's at 65% of the rate paid for outpatient hospital services, to adopt a permanent rule by September 1, 2008, and if not, to continue the freeze until it is adopted. Agency Response: Although the comments are outside the scope of this rulemaking, they will be considered as plans for future rulemaking on ASC.

For: The Boeing Company, Zenith Insurance Company, Insurance Council of Texas, Office of Injured Employee Counsel, Property Casualty Insurance Association of America, Texas Mutual Insurance Company. Against: None.

The amendments are adopted under the Texas Labor Code §§408.021, 413.002, 413.007, 413.011 - 413.017, 413.019, 413.031; 413.0511, 402.0111, and 402.061. Section 408.021 entitles injured employees to all health care reasonably required by the nature of the injury as and when needed. Section 413.002 requires the Division to monitor health care providers, insurance carriers and claimants to ensure compliance with Division rules. Section 413.007 sets out information to be maintained by the Division. Section 413.011 mandates that the Division by rule establish medical reimbursement policies and guidelines. Section 413.012 requires review and revision of the medical policies and fee guidelines at least every two years. Section 413.013 requires the Division by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review. Section 413.014 requires preauthorization by the insurance carrier for health care treatments and services. Section 413.015 requires insurance carriers to pay charges for medical services as provided in the statute and requires that the Division ensure compliance with the medical policies and fee guidelines through audit and review. Section 413.016 provides for refund of payments made in violation of the medical policies and fee guidelines. Section 413.017 provides a presumption of reasonableness for medical services fees that are consistent with the medical policies and fee guidelines. Section 413.019 provides for payment of interest on delayed payments refunds or overpayments. Section 413.031 provides a procedure for medical dispute resolution. Section 413.0511 requires the Medical Advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by §413.011. Section 402.00111 provides that the Commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2007.

TRD-200706245
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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Proposal publication date: October 26, 2007
For further information, please call: (512) 804-4715

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCAA §112, 40 CFR PART 63)

30 TAC §§113.100, 113.105, 113.106, 113.110, 113.120, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.300, 113.320, 113.330, 113.350, 113.380, 113.390, 113.400, 113.420, 113.430, 113.440, 113.500, 113.550, 113.560, 113.600, 113.620, 113.640, 113.650, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.740, 113.750, 113.770, 113.780, 113.810, 113.840, 113.860, 113.870, 113.880, 113.890, 113.900, 113.910, 113.920, 113.930, 113.940,

113.960, 113.970, 113.980, 113.990, 113.1000, 113.1010, 113.1030, 113.1040, 113.1060, 113.1070, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1260, 113.1270, 113.1280, 113.1290, 113.1390, 113.1400, 113.1410, 113.1420

The Texas Commission on Environmental Quality (commission) adopts amendments to §§113.100, 113.105, 113.106, 113.110, 113.120, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.300, 113.320, 113.330, 113.350, 113.380, 113.390, 113.400, 113.420, 113.430, 113.440, 113.500, 113.550, 113.560, 113.600, 113.620, 113.640, 113.650, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.740, 113.750, 113.770, 113.780, 113.810, 113.840, 113.860, 113.880, 113.890, 113.900, 113.910, 113.920, 113.930, 113.940, 113.960, 113.970, 113.980, 113.990, 113.1000, 113.1010, 113.1030, 113.1040, 113.1060, 113.1070, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1260, 113.1270, 113.1280, and 113.1290 *without changes* to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5296) and will not be republished. The commission also adopts new §§113.1390, 113.1400, 113.1410, and 113.1420 *without changes* to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5296) and will not be republished. Section 113.870 is adopted *with changes* to the text and will be republished.

The commission does not adopt new §113.1130 as published in the August 24, 2007, issue of the *Texas Register*. A federal court has issued a full vacatur of the National Emission Standards for Hazardous Air Pollutants for the source category referenced in this section.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted amendments to Chapter 113 incorporate amendments that the United States Environmental Protection Agency (EPA) made to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under Title 40 Code of Federal Regulations (40 CFR) Part 63 and add five NESHAPs that have not previously been incorporated into Chapter 113.

The adopted amendments to Chapter 113 incorporate by reference amendments that the EPA made to the NESHAP for Source Categories under 40 CFR Part 63. These are technology-based standards commonly referred to as the maximum achievable control technology (MACT) standards. The MACT standards are required by the Federal Clean Air Act Amendments of 1990 (FCAA), §112, which requires the EPA to develop national technology-based standards for new and existing sources of hazardous air pollutants listed in §112. The MACT standards are generally required to be based on the maximum degree of emission control that is achievable, taking into consideration cost and any non-air quality health and environmental impacts and energy requirements.

In addition, the adopted new sections incorporate by reference five MACT standards that have not been previously incorporated into Chapter 113. The EPA is developing these national standards to regulate emissions of hazardous air pollutants as required under FCAA, §112, as codified in 42 United States Code (USC), §7412.

Under federal law, affected industries are required to implement the MACT standards regardless of whether the commission or the EPA is the agency responsible for implementation. As MACT standards are promulgated or amended by the EPA, they are reviewed by commission staff for compatibility with current commission regulations and policies. The commission then incorporates them, as appropriate, into Chapter 113 through formal rulemaking procedures. After each MACT standard or amendment is adopted, the commission will seek formal delegation from the EPA under 40 CFR Part 63, Subpart E (Approval of State Programs and Delegation of Federal Authorities), which implements 42 USC, §7412(1). Upon delegation, the commission will be responsible for administering and enforcing the MACT requirements.

The commission adopts the incorporation of the following amendments that the EPA has made to the 40 CFR Part 63 General Provisions and 82 of the federal MACT standards previously incorporated into the commission rules by updating the federal promulgation dates and *Federal Register* (FR) citations stated in the commission rules, as discussed more specifically in the SECTION BY SECTION DISCUSSION in this preamble. The amended standards, along with their corresponding Chapter 113 sections and original incorporation dates, are listed in the following table.

Figure 1: 30 TAC Chapter 113--Preamble

The five recent federal MACT standards not currently included in Chapter 113 that the commission is adopting as incorporated by reference without change are summarized in the following table.

Figure 2: 30 TAC Chapter 113--Preamble

SECTION BY SECTION DISCUSSION

Section 113.100--General Provisions (40 CFR 63, Subpart A)

The commission adopts §113.100 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart A, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart A, on April 15, 2005 (70 FR 19992), December 16, 2005 (70 FR 74870), February 16, 2006 (71 FR 8342), April 20, 2006 (71 FR 20446), November 28, 2006 (71 FR 68750), December 6, 2006 (71 FR 70660), January 3, 2007 (72 FR 26), January 23, 2007 (72 FR 2930), and May 16, 2007 (72 FR 27437). The April 15, 2005, amendments incorporated by reference the ANSI/ASME PTC 19.10-1981, a Flue and Exhaust Gas Analyses. The December 16, 2005, amendments give the new address to purchase material from the American Society of Mechanical Engineers (ASME). A new incorporation by reference of an ASME analysis was also added. The February 16, 2006, amendments incorporated by reference a source sampling method. The April 20, 2006, amendments revised compliance with standards and maintenance requirements, as well as monitoring, recordkeeping, and reporting requirements as they relate to startup, shutdown, and malfunction plans.

The November 28, 2006, amendments incorporated by reference the New Hampshire Regulations Applicable to Hazardous Air Pollutants, September 2006. The December 6, 2006, January 3, 2007, and January 23, 2007 amendments incorporated by reference new test methods. The May 16, 2007, amendments allow for extensions to the deadline to conduct initial or subsequent performance tests due to a force majeure condition.

Section 113.105--Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act §112(j) (40 CFR 63, Subpart B, §§63.50 - 63.56)

The commission adopts §113.105 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart B, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart B, on July 11, 2005 (70 FR 39662). The July 11, 2005, amendments revised Table 1 of 40 CFR Part 63, Subpart B to reflect the revised deadlines in a recently amended consent decree relating to boilers and hydrochloric acid production furnaces that burn hazardous waste.

Section 113.106--List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List (40 CFR 63, Subpart C)

The commission adopts §113.106 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart C, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart C, on December 19, 2005 (70 FR 75047). The December 19, 2005, amendments revised the list of hazardous air pollutants contained in Federal Clean Air Act, §112 by removing the compound methyl ethyl ketone.

Section 113.110--Synthetic Organic Chemical Manufacturing Industry (40 CFR 63, Subpart F)

The commission adopts §113.110 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart F, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart F, on April 20, 2006 (71 FR 20446) and December 21, 2006 (71 FR 76614). The April 20, 2006, amendments revised general standards and maintenance wastewater requirements as they relate to startup, shutdown, and malfunction plans. The December 21, 2006, amendments removed methyl ethyl ketone from the Hazardous Organic NESHAP (HON) tables of this subpart.

Section 113.120--Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 CFR 63, Subpart G)

The commission adopts §113.120 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart G, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart G, on December 23, 2004 (69 FR 76863), April 20, 2006 (71 FR 20446), and December 21, 2006 (71 FR 76603). The December 23, 2004, amendments revised the HON to allow vapor balancing in conjunction with the use of a pressure setting to comply with the storage tank control requirements standards. The April 20, 2006, amendments revised the general reporting and continuous recordkeeping requirements as they relate to startup, shutdown, and malfunction plans. The December 21, 2006, amendments removed methyl ethyl ketone from HON tables and clarified the requirement to re-determine Group status for wastewater streams if process or operational changes occur that could reasonably change the wastewater stream from a Group 2 to a Group 1 stream. In addition, these amendments waived all notification and reporting requirements for owners or operators of facilities where railcars, tank trucks, or barges, which are part of the vapor balancing control option, are reloaded or cleaned. This allows off-site reloading and cleaning operations to comply with monitoring, recordkeeping, and reporting provisions of any other applicable 40 CFR Part 63 standard in lieu of the monitoring, recordkeeping, and reporting in the HON.

Section 113.170--Coke Oven Batteries (40 CFR 63, Subpart L)

The commission adopts §113.170 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart L, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart L, on April 15, 2005 (70 FR 19992) and April 20, 2006 (71 FR 20446). The April 15, 2005, amendments clarified limits for visible emissions for existing by-product batteries and improved control of charging emissions from a new non-recovery battery. In addition, these amendments required the owner or operator to implement a work practice standard designed to ensure that the draft on the oven is maximized during charging. The April 20, 2006, amendments revised the definition of malfunction and the requirements for startup, shutdown, and malfunctions.

Section 113.180--Perchloroethylene Dry Cleaning Facilities (40 CFR 63, Subpart M)

The commission adopts §113.180 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart M, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart M, on December 19, 2005 (70 FR 75320), July 27, 2006 (71 FR 42724), and September 21, 2006 (71 FR 55280). The December 19, 2005, amendments revised the applicability to state that area sources subject to the NESHAP are exempt from the obligation to obtain operating permits under 40 CFR Part 70 (State Operating Permit Programs) or 71 (Federal Operating Permit Programs), unless the source would be required to obtain these permits for another reason, as defined in 40 CFR Part 70 or 71. The July 27, 2006, amendments promulgated revisions to take into account new developments in production practices, processes, and control technologies. In addition, these amendments promulgated more stringent standards for major sources in order to protect public health with an ample margin of safety. The September 21, 2006, amendments corrected a typographical error.

Section 113.190--Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63, Subpart N)

The commission adopts §113.190 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart N, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart N, on December 19, 2005 (70 FR 75320) and April 20, 2006 (71 FR 20446). The December 19, 2005, amendments revised the applicability to state that area sources subject to the NESHAP are exempt from the obligation to obtain operating permits under 40 CFR Part 70 or 71, unless the source would be required to obtain these permits for another reason, as defined in 40 CFR Part 70 or 71. The April 20, 2006, amendments revised standards as they relate to startup, shutdown, and malfunction plans.

Section 113.200--Ethylene Oxide Emissions Standards for Sterilization Facilities (40 CFR 63, Subpart O)

The commission adopts §113.200 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart O, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart O, on December 19, 2005 (70 FR 75320). The December 19, 2005, amendments revised the applicability to state that area sources

subject to the NESHAP are exempt from the obligation to obtain operating permits under 40 CFR Part 70 or 71, unless the source would be required to obtain these permits for another reason, as defined in 40 CFR Part 70 or 71.

Section 113.220--Industrial Process Cooling Towers (40 CFR 63, Subpart Q)

The commission adopts §113.220 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart Q, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart Q, on April 7, 2006 (71 FR 17738). The April 7, 2006, amendments revised the applicability requirements to provide that sources that are operated with chromium-based water treatment chemicals are to be subject to the standard.

Section 113.230--Gasoline Distribution Facilities (40 CFR 63, Subpart R)

The commission adopts §113.230 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart R, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart R, on April 6, 2006 (71 FR 17352). The April 6, 2006, amendments updated reporting and recordkeeping requirements pertaining to annual certification testing and railcar bubble leak testing.

Section 113.240--Pulp and Paper Industry (40 CFR 63, Subpart S)

The commission adopts §113.240 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart S, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart S, on April 13, 2004 (69 FR 19734). The April 13, 2004, amendments affect a semi-chemical pulp and paper mill located in Tomahawk, Wisconsin.

Section 113.250--Halogenated Solvent Cleaning (40 CFR 63, Subpart T)

The commission adopts §113.250 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart T, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart T, on December 19, 2005 (70 FR 75320) and May 3, 2007 (72 FR 25138). The December 19, 2005, amendments revised the applicability to state that area sources subject to the NESHAP are exempt from the obligation to obtain operating permits under 40 CFR Part 70 or 71, unless the source would be required to obtain these permits for another reason, as defined in 40 CFR Part 70 or 71. The May 3, 2007, amendments revised the emission limits of methylene chloride, trichloroethylene, and perchloroethylene from facilities engaged in halogenated solvent cleaning. The standards became more stringent to provide an ample margin of safety to protect public health.

Section 113.260--Group I Polymers and Resins (40 CFR 63, Subpart U)

The commission adopts §113.260 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart U, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart U, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general recordkeeping and reporting provisions as they relate to startup, shutdown, and malfunction plans.

Section 113.280--Epoxy Resins Production and Non-Nylon Polyamides Production (40 CFR 63, Subpart W)

The commission adopts §113.280 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart W, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart W, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the monitoring requirements as they relate to startup, shutdown, and malfunctions.

Section 113.300--Marine Vessel Loading (40 CFR 63, Subpart Y)

The commission adopts §113.300 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart Y, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart Y, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised standards to require an operation and maintenance plan to be written.

Section 113.320--Phosphoric Acid Manufacturing Plants (40 CFR 63, Subpart AA)

The commission adopts §113.320 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart AA, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart AA, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the applicability as it relates to startup, shutdown, and malfunctions.

Section 113.330--Phosphate Fertilizers Production Plants (40 CFR 63, Subpart BB)

The commission adopts §113.330 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart BB, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart BB, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the applicability as it relates to startup, shutdown, and malfunctions.

Section 113.350--Off-Site Waste and Recovery Operations (40 CFR 63, Subpart DD)

The commission adopts §113.350 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart DD, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart DD, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the inspection and monitoring requirements as they relate to startup, shutdown, and malfunctions.

Section 113.380--Aerospace Manufacturing and Rework Facilities (40 CFR 63, Subpart GG)

The commission adopts §113.380 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart GG, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart GG, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general standards as they relate to startup, shutdown, and malfunctions.

Section 113.390--Oil and Natural Gas Production Facilities (40 CFR 63, Subpart HH)

The commission adopts §113.390 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HH,

made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart HH, on April 20, 2006 (71 FR 20446) and January 3, 2007 (72 FR 26). The April 20, 2006, amendments revised the inspection and monitoring requirements and general provisions as they relate to startup, shutdown, and malfunctions. The January 3, 2007, amendments revised the applicability and designation of affected source, definitions, standards, test methods, compliance procedures, compliance demonstrations, and recordkeeping and reporting requirements to reflect that oil and natural gas production is identified as an area source category under FCAA, §112(c)(3).

Section 113.400--Shipbuilding and Ship Repair (Surface Coating) (40 CFR 63, Subpart II)

The commission adopts §113.400 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart II, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart II, on December 29, 2006 (71 FR 78369). The December 29, 2006, amendments revised and added new definitions and eliminated the term "pleasure craft." These amendments also excluded those coating activities that are subject to emission limitations or work practices under the NESHAP for boat manufacturing and they amended the compliance period for shipbuilding and ship operations.

Section 113.420--Printing and Publishing (40 CFR 63, Subpart KK)

The commission adopts §113.420 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart KK, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart KK, on May 24, 2006 (71 FR 29792). The May 24, 2006, amendments revised the applicability, which includes a provision for some sources to establish and maintain themselves as area sources of HAP with respect to this NESHAP. These amendments also provided an option for including stand-alone coating equipment and revised definitions, standards, performance test methods, and monitoring, recordkeeping and reporting requirements.

Section 113.430--Primary Aluminum Reduction Plants (40 CFR 63, Subpart LL)

The commission adopts §113.430 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart LL, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart LL, on November 2, 2005 (70 FR 66280) and April 20, 2006 (71 FR 20446). The November 2, 2005, amendments revised the emission limit for polycyclic organic matter applicable to one potline subcategory. The amendments also revised the compliance provisions to clarify the dates which all plants must meet the NESHAP requirements and to specify the time allowed to demonstrate initial compliance for a new or reconstructed potline, anode bake furnace, or pitch storage tank, as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. The April 20, 2006, amendments revised the emission monitoring requirements, as well as the notification, reporting and recordkeeping requirements as they relate to startup, shutdown, and malfunctions.

Section 113.440--Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR 63, Subpart MM)

The commission adopts §113.440 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart MM, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart MM, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the monitoring and recordkeeping requirements as they relate to startup, shutdown, and malfunctions.

Section 113.500--Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR 63, Subpart SS)

The commission adopts §113.500 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart SS, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart SS, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the recordkeeping requirements as they relate to startup, shutdown, and malfunctions.

Section 113.550--Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (40 CFR 63, Subpart XX)

The commission adopts §113.550 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart XX, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart XX, on April 13, 2005 (70 FR 19266). The April 13, 2005, amendments clarified the compliance requirements for benzene waste streams and the requirements for heat exchangers and heat exchanger systems. These amendments also stipulate the provisions for off-site waste transfer.

Section 113.560--Generic Maximum Achievable Control Technology Standards (40 CFR 63, Subpart YY)

The commission adopts §113.560 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart YY, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart YY, on April 13, 2005 (70 FR 19266) and April 20, 2006 (71 FR 20446). The April 13, 2005, amendments corrected the regulatory language that made emissions from ethylene cracking furnaces during decoking operations an exception to the provisions. These amendments also delineate overlapping requirements for storage vessels and transfer racks. The April 20, 2006, amendments revised the definition of malfunction and requirements as they relate to startup, shutdown, and malfunctions.

Section 113.600--Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 CFR 63, Subpart CCC)

The commission adopts §113.600 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart CCC, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart CCC, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the reporting requirements as they relate to startup, shutdown, and malfunctions.

Section 113.620--Hazardous Waste Combustors (40 CFR 63, Subpart EEE)

The commission adopts §113.620 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart EEE, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart EEE, on October 12, 2005 (70 FR 59402), April 20, 2006 (71

FR 20446), and October 25, 2006 (71 FR 62388). The October 12, 2005, amendments implement FCAA, §112(d) by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the MACT. The April 20, 2006, amendments revised the compliance requirements as they relate to startup, shutdown, and malfunctions. The October 25, 2006, amendments suspend the obligation of new cement kilns to comply with the particulate matter standard until the EPA takes final action on the proposal.

Section 113.640--Pharmaceuticals Production (40 CFR 63, Subpart GGG)

The commission adopts §113.640 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart GGG, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart GGG, on May 13, 2005 (70 FR 25666) and April 20, 2006 (71 FR 20446). The May 13, 2005, amendments added a reference to an existing generic standard as a compliance alternative for large wastewater containers; applied the same planned routine maintenance provisions for storage tanks to wastewater tanks; allowed monitoring of the condenser product side temperature in lieu of the exit gas temperature; and allowed monitoring of caustic strength of the scrubber effluent as an alternative to measuring pH. The April 20, 2006, amendments revised the definition of malfunction. The wastewater standards, monitoring requirements, and recordkeeping requirements were also amended, requiring a startup, shutdown, and malfunction plan.

Section 113.650--Natural Gas Transmission and Storage Facilities (40 CFR 63, Subpart HHH)

The commission adopts §113.650 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HHH, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart HHH, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the inspection and monitoring requirements, as well as the general provisions as they relate to startup, shutdown, and malfunctions.

Section 113.670--Group IV Polymers and Resins (40 CFR 63, Subpart JJJ)

The commission adopts §113.670 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart JJJ, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart JJJ, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general recordkeeping and reporting provisions requiring a startup, shutdown, and malfunction plan.

Section 113.690--Portland Cement Manufacturing Industry (40 CFR 63, Subpart LLL)

The commission adopts §113.690 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart LLL, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart LLL, on December 20, 2006 (71 FR 76518). The December 20, 2006, amendments revised the standards and operating limits for kilns and in-line kiln/raw mills. The amendments also revised the standards for new or reconstructed raw material dryers and updated the performance testing requirements, monitoring and recordkeeping requirements, and compliance dates.

Section 113.700--Pesticide Active Ingredient Production (40 CFR 63, Subpart MMM)

The commission adopts §113.700 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart MMM, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart MMM, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the definition of malfunction. These amendments also revised the monitoring, inspection, and recordkeeping provisions by requiring a startup, shutdown, and malfunction plan.

Section 113.710--Wool Fiberglass Manufacturing (40 CFR 63, Subpart NNN)

The commission adopts §113.710 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart NNN, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart NNN, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the standards requiring an operation and maintenance plan to be written.

Section 113.720--Manufacture of Amino/Phenolic Resins (40 CFR 63, Subpart OOO)

The commission adopts §113.720 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart OOO, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart OOO, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the definition of malfunction. These amendments also revised the compliance and recordkeeping requirements as they relate to startup, shutdown, and malfunctions.

Section 113.730--Polyether Polyols Production (40 CFR 63, Subpart PPP)

The commission adopts §113.730 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart PPP, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart PPP, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general recordkeeping and reporting provisions as they relate to startup, shutdown, and malfunctions.

Section 113.740--Primary Copper Smelting (40 CFR 63, Subpart QQQ)

The commission adopts §113.740 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart QQQ, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart QQQ, on July 14, 2005 (70 FR 40672) and April 20, 2006 (71 FR 20446). The July 14, 2005, amendments corrected the monitoring requirements for control systems other than baghouses and venturi wet scrubbers. The April 20, 2006, amendments revised requirements as they relate to startup, shutdown, and malfunctions.

Section 113.750--Secondary Aluminum Production (40 CFR 63, Subpart RRR)

The commission adopts §113.750 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart RRR, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart RRR, on September 3, 2004 (69 FR 53980), October 3, 2005 (70 FR 57513), December 19, 2005 (70 FR 75320), and April 20, 2006 (71 FR 20446). The September 3, 2004, amend-

ments clarified regulatory text, corrected errors, and improved understanding of the rule requirements. The definitions were revised by deleting the definition of internal runaround replacing it with a definition of runaround scrap, and revising the definition of "T_i" to state the proper units. These amendments included units for emissions of dioxin/furans (D/F) to clarify that the requirements for measurement of feed/charge weight apply to facilities subject to emission limits for D/F, as well as emission limits for other pollutants. The September 3, 2004, amendments also revised the operating requirements for dross-only furnaces to be consistent with the definition for this type of furnace. Equation 7 in 40 CFR, §63.1513 was amended to apply only to particulate matter and hydrogen chloride emissions and a separate equation for computing D/F emissions was added in the appropriate measurement units for the standard. The requirements for the semiannual excess emission/summary reports were also amended.

The October 3, 2005, amendments corrected a punctuation error in the definition of clean charge, and a typographical error in the operating temperature of a scrap dryer/delacquering kiln/decoating kiln afterburner. The December 19, 2005, amendments revised the applicability to state that area sources subject to the NESHAP are exempt from the obligation to obtain operating permits under 40 CFR Part 70 or 71, unless the source would be required to obtain these permits for another reason, as defined in 40 CFR Part 70 or 71. The April 20, 2006, amendments revised the reporting requirements as they relate to startup, shutdown, and malfunction plans.

Section 113.770--Primary Lead Smelting (40 CFR 63, Subpart TTT)

The commission adopts §113.770 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart TTT, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart TTT, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the definition of malfunction. In addition, the monitoring requirements were amended as they relate to startup, shutdown, and malfunctions.

Section 113.780--Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR 63, Subpart UUU)

The commission adopts §113.780 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart UUU, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart UUU, on February 9, 2005 (70 FR 6930) and April 20, 2006 (71 FR 20446). The February 9, 2005, amendments revised the affected source designations and added new compliance options for catalytic reforming units that use different types of emission control systems. These amendments added new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles. The February 9, 2005, amendments also deferred technical requirements for most continuous parameter monitoring systems. In addition, these amendments clarified the testing and monitoring requirements, and included editorial corrections. The April 20, 2006, amendments revised the general requirements as they relate to startup, shutdown, and malfunctions.

Section 113.810--Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR 63, Subpart XXX)

The commission adopts §113.810 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart XXX, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart XXX, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the definition of malfunction. The amendments also revised performance testing, test methods and compliance demonstrations relating to startup, shutdown, and malfunctions.

Section 113.840--Municipal Solid Waste Landfills (40 CFR 63, Subpart AAAA)

The commission adopts §113.840 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart AAAA, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart AAAA, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the compliance determination and deviation requirements as they relate to startup, shutdown, and malfunction plans.

Section 113.860--Manufacturing of Nutritional Yeast (40 CFR 63, Subpart CCCC)

The commission adopts §113.860 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart CCCC, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart CCCC, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general requirements as they relate to startup, shutdown, and malfunctions.

Section 113.870--Plywood and Composite Wood Products (40 CFR 63, Subpart DDDD)

The commission adopts new §113.870 by incorporating by reference, the final promulgated rules in 40 CFR Part 63, Subpart DDDD, adopted by the EPA on July 30, 2004 (69 FR 45944), as amended on February 16, 2006 (71 FR 8342), April 20, 2006 (71 FR 20446), and October 29, 2007 (72 FR 61060. This MACT standard regulates HAP emissions from plywood and composite wood product facilities and sawmills with lumber kilns that are major sources. HAPs emitted from these facilities include: acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde.

The February 16, 2006, amendments addressed a petition for reconsideration of certain provisions, and amended the applicability, general requirements, and definitions. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunction plans. A federal court has partially vacated portions of the plywood and composite wood product MACT, and the EPA has published a final rule announcing the Court decision and promulgating ministerial amendments that will incorporate the Court's decision into the Code of Federal Regulations.

Section 113.880--Organic Liquids Distribution (Non-Gasoline) (40 CFR 63, Subpart EEEE)

The commission adopts §113.880 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart EEEE, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart EEEE, on April 20, 2006 (71 FR 20446) and July 28, 2006 (71 FR 42898). The April 20, 2006, amendments revised the general requirements and provisions as they relate to startup, shutdown, and malfunctions. The July 28, 2006, amendments provided an

additional, equivalent control option that allows routing of displaced HAP vapors to a storage tank with a common header. An option was added to allow vapor balancing back to transport vehicle for storage tanks when they are being filled with organic liquids. A compliance date extension was added for all storage tanks. These amendments also revised the recordkeeping and reporting requirements for emissions sources that do not require control.

Section 113.890--Miscellaneous Organic Chemical Manufacturing (40 CFR 63, Subpart FFFF)

The commission adopts §113.890 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart FFFF, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart FFFF, on July 1, 2005 (70 FR 38554), March 1, 2006 (71 FR 10439), April 20, 2006 (71 FR 20446), and July 14, 2006 (71 FR 40316). The July 1, 2005, amendments clarified the compliance requirements for flares and the alternative standards, which limit the outlet concentration to 20 parts per million. These amendments also extended the vapor balancing alternative to cover transfers from barges to storage tanks and amended the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas. The July 1, 2005, amendments also clarified the signature requirements for the notification of compliance status report.

The March 1, 2006, amendments extended the compliance date for existing sources by 18 months. The April 20, 2006, amendments revised the general provisions as they relate to startup, shutdown, and malfunction plans. The July 14, 2006, amendments clarified the applicability of MACT FFFF, provided additional compliance options, modified initial and continuous compliance requirements, and simplified the recordkeeping and reporting requirements. These provisions will reduce the burden associated with demonstrating compliance without affecting emissions control or the ability of enforcement agencies to ensure compliance.

Section 113.900--Solvent Extraction for Vegetable Oil Production (40 CFR 63, Subpart GGGG)

The commission adopts §113.900 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart GGGG, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart GGGG, on September 1, 2004 (69 FR 53338) and April 20, 2006 (71 FR 20446). The September 1, 2004, amendments revised the compliance requirements for vegetable oil production processes that exclusively use a qualifying low-HAP extraction solvent. The April 20, 2006, amendments revised definitions and compliance with HAP emission standards. These amendments also required a startup, shutdown, and malfunction plan.

Section 113.910--Wet-Formed Fiberglass Mat Production (40 CFR 63, Subpart HHHH)

The commission adopts §113.910 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HHHH, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart HHHH, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the operating limits and required a startup, shutdown, and malfunction plan.

Section 113.920--Surface Coating of Automobiles and Light-Duty Trucks (40 CFR 63, Subpart IIII)

The commission adopts §113.920 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart IIII, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart IIII, on April 20, 2006 (71 FR 20446), December 22, 2006 (71 FR 76922), and April 24, 2007 (72 FR 20227). The April 20, 2006, amendments revised the general requirements and added requirements for demonstrating compliance relating to startup, shutdown, and malfunctions. The December 22, 2006, amendments allowed the owner or operator of an automobile and light-duty coating affected source to include in that affected source any coating operation which applies coatings to parts intended for use in new automobiles, new light-duty trucks, or aftermarket repair or replacement parts for automobiles or light-duty trucks which would otherwise be subject to the Miscellaneous Metal Part NESHAP or the Plastic Parts NESHAP. These amendments also added an option to include the coating of heavier vehicle bodies, body parts for heavier vehicles, and parts for heavier vehicles in the affected source under this NESHAP. The April 24, 2007, amendments revised the applicability, recordkeeping requirements, determination of initial compliance, and definitions.

Section 113.930--Paper and Other Web Coating (40 CFR 63, Subpart JJJJ)

The commission adopts §113.930 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart JJJJ, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart JJJJ, on May 24, 2006 (71 FR 29792). The May 24, 2006, amendments revised what is subject to this subpart by including any web coating lines.

Section 113.940--Surface Coating of Metal Cans (40 CFR 63, Subpart KKKK)

The commission adopts §113.940 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart KKKK, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart KKKK, on January 6, 2006 (71 FR 1378) and April 20, 2006 (71 FR 20446). The January 6, 2006, amendments updated operating limits to state that new and reconstructed sources must meet the operating limits at all times after they have been established during the performance test, and existing sources must meet the operating limits at all times after the compliance date of November 13, 2006. These amendments also added the phrase "considering controls" to the description of major source of HAP emissions and all required calculations. In addition, all compliance demonstrations may be performed using either metric or English units. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.960--Surface Coating of Miscellaneous Metal Parts and Products (40 CFR 63, Subpart MMMM)

The commission adopts §113.960 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart MMMM, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart MMMM, on April 20, 2006 (71 FR 20446) and December 22, 2006 (71 FR 76927). The April 20, 2006, amendments revised the general requirements as they relate to startup, shutdown, and malfunctions. The December 22, 2006, amendments allowed the coating of heavier vehicle bodies, metal body parts for heavier vehicles, and other metal parts for heavier vehicles

to comply with the Automobiles and Light-Duty Trucks NESHAP in lieu of complying with the Miscellaneous Metal Part NESHAP.

Section 113.970--Surface Coating of Large Appliances (40 CFR 63, Subpart NNNN)

The commission adopts §113.970 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart NNNN, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart NNNN, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.980--Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 CFR 63, Subpart OOOO)

The commission adopts §113.980 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart OOOO, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart OOOO, on August 4, 2004 (69 FR 47001), April 20, 2006 (71 FR 20446), and May 24, 2006 (71 FR 29792). The August 4, 2004, amendments revised the standards to clarify the applicability of the Fabric NESHAP to coating, slashing, dyeing, or finishing operations at synthetic fiber manufacturing facilities where the fibers are the final product of the facility. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions. The May 24, 2006, amendments revised what is subject to the subpart to include any web coating lines.

Section 113.990--Surface Coating of Plastic Parts and Products (40 CFR 63, Subpart PPPP)

The commission adopts §113.990 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart PPPP, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart PPPP, on April 20, 2006 (71 FR 20446), December 22, 2006 (71 FR 76827), and April 24, 2007 (72 FR 20227). The April 20, 2006, amendments revised the general requirements as they relate to startup, shutdown, and malfunctions. The December 22, 2006, amendments allow the coating of heavier plastic vehicle bodies, plastic body parts for heavier vehicles, and other plastic parts for heavier vehicles to comply with the Automobiles and Light-Duty Trucks NESHAP in lieu of the Plastic Parts NESHAP. The April 24, 2007, amendments revised the applicability to not allow screen printing.

Section 113.1000--Surface Coating of Wood Building Products (40 CFR 63, Subpart QQQQ)

The commission adopts §113.1000 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart QQQQ, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart QQQQ, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1010--Surface Coating of Metal Furniture (40 CFR 63, Subpart RRRR)

The commission adopts §113.1010 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart RRRR, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart RRRR, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general provisions as they relate to startup, shutdown, and malfunction plans.

Section 113.1030--Leather Finishing Operations (40 CFR 63, Subpart TTTT)

The commission adopts §113.1030 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart TTTT, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart TTTT, on February 7, 2005 (70 FR 6355). The February 7, 2005, amendments clarified the frequency for categorizing leather product process types, modified the definition of specialty leather, added a definition for vacuum mulling, and added an alternative procedure for determining the actual monthly solvent loss from an affected source.

Section 113.1040--Cellulose Products Manufacturing (40 CFR 63, Subpart UUUU)

The commission adopts §113.1040 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart UUUU, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart UUUU, on June 24, 2005 (70 FR 36523), August 10, 2005 (70 FR 46684) and April 20, 2006 (71 FR 20446). The June 24, 2005, amendments corrected the date in the definition of a process change that was included in the final rule. The August 10, 2005, amendments revised the work practice standards, general and initial compliance requirements, definitions, and general provisions applicability, as well as correct typographical, formatting, and cross-referencing errors. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1060--Reinforced Plastic Composites Production (40 CFR 63, Subpart WWWW)

The commission adopts §113.1060 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart WWWW, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart WWWW, on August 25, 2005 (70 FR 50118) and April 20, 2006 (71 FR 20446). The August 25, 2005, amendments revised compliance options for open molding, corrected errors, and added clarification to sections of the rule. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1070--Rubber Tire Manufacturing (40 CFR 63, Subpart XXXX)

The commission adopts §113.1070 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart XXXX, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart XXXX, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1080--Stationary Combustion Turbines (40 CFR 63, Subpart YYYY)

The commission adopts §113.1080 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart YYYY, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart YYYY, on April 20, 2006 (71 FR 20446). The

April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1090--Stationary Reciprocating Internal Combustion Engines (40 CFR 63, Subpart ZZZZ)

The commission adopts §113.1090 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart ZZZZ, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart ZZZZ, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1100--Lime Manufacturing Plants (40 CFR 63, Subpart AAAAA)

The commission adopts §113.1100 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart AAAAA, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart AAAAA, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1110--Semiconductor Manufacturing (40 CFR 63, Subpart BBBBB)

The commission adopts §113.1110 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart BBBBB, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart BBBBB, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general provisions as they relate to startup, shutdown, and malfunction plans.

Section 113.1120--Coke Ovens: Pushing, Quenching, and Battery Stacks (40 CFR 63, Subpart CCCCC)

The commission adopts §113.1120 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart CCCCC, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart CCCCC, on October 13, 2004 (69 FR 60813), August 2, 2005 (70 FR 44285), and April 20, 2006 (71 FR 20446). The October 13, 2004, amendments revised the parametric operating limits and associated compliance provisions for capture systems used to control emissions from pushing. The October 13, 2004, amendments also amended the requirements for mobile scrubber cars that capture emissions which occur during pushing and travel. The operating limit was amended to state that the requirement applies to capture systems that use an electric motor to drive the fan. These amendments also added requirements for demonstrating initial and continuous compliance with the new operating limit for daily average static pressure or fan revolutions per minute. The provision to complete all repairs within 30 days after the defect or deficiency is found was replaced.

The August 2, 2005, amendments required a plant owner or operator to complete repairs within 30 days after the date that the defect or deficiency is discovered. In addition, the August 2, 2005, amendments clarified some sampling procedures. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1140--Iron and Steel Foundries (40 CFR 63, Subpart EEEEE)

The commission adopts §113.1140 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart EEEEE, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart EEEEE, on May 20, 2005 (70 FR 29400) and April 20, 2006 (71 FR 20446). The May 20, 2005, amendments clarified that the scrap requirements apply to each type of scrap material received or each scrap storage area, pile, or bin as long as the scrap material subject to certification requirements remains segregated from scrap material subject to selection/inspection plans. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1150--Integrated Iron and Steel Manufacturing Facilities (40 CFR 63, Subpart FFFFF)

The commission adopts §113.1150 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart FFFFF, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart FFFFF, on April 20, 2006 (71 FR 20446) and July 13, 2006 (71 FR 39579). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions. The July 13, 2006, amendments added a new compliance option, revised emission limitations, reduced the frequency of repeat performance tests for certain emission units, added corrective action requirements, and clarified monitoring, recordkeeping, and reporting requirements.

Section 113.1160--Site Remediation (40 CFR 63, Subpart GGGGG)

The commission adopts §113.1160 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart GGGGG, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart GGGGG, on April 20, 2006 (71 FR 20446) and November 29, 2006 (71 FR 69011). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions. The November 29, 2006, amendments revised the major source determination requirements used for determining the applicability for certain facilities involved with oil and natural gas production. These amendments clarified how the 1 megagram applicability exemption is to be applied at a facility, and clarified the intent for application of the 30-day site remediation exemption, including those situations when the remediation material is transferred off-site. The November 29, 2006, amendments also revised the applicable regulatory language referring to the point at which the facility owner or operator determines the average volatile organic HAP concentration of a remediation material and added a compliance option.

Section 113.1170--Miscellaneous Coating Manufacturing (40 CFR 63, Subpart HHHHH)

The commission adopts §113.1170 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HHHHH, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart HHHHH, on May 13, 2005 (70 FR 25666), December 21, 2005 (70 FR 75924), April 20, 2006 (71 FR 20446), and October 4, 2006 (71 FR 58499). The May 13, 2005, amendments were as follows: added a reference to an existing general standard as a

compliance alternative for large wastewater containers; applied the same planned routine maintenance provisions for storage tanks to wastewater tanks; allowed monitoring of the condenser product side temperature in lieu of the exit gas temperature; and allowed monitoring of caustic strength of the scrubber effluent as an alternative to measuring pH.

The December 21, 2005, amendments specified that certain raw material formulation data as supplied to coating manufacturers may be used to demonstrate compliance with the weight percent HAP limit. The April 20, 2006, amendments revised the general provisions as they relate to startup, shutdown, and malfunction plans. The October 4, 2006, amendments clarified that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. These amendments extended the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit. In addition, the October 4, 2006, amendments clarified that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt.

Section 113.1180--Mercury Emissions from Mercury Cell Chlor-Alkali Plants (40 CFR 63, Subpart IIIII)

The commission adopts §113.1180 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart IIIII, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart IIIII, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1190--Brick and Structural Clay Products Manufacturing (40 CFR 63, Subpart JJJJJ)

The commission adopts §113.1190 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart JJJJJ, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart JJJJJ, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1200--Clay Ceramics Manufacturing (40 CFR 63, Subpart KKKKK)

The commission adopts §113.1200 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart KKKKK, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart KKKKK, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1210--Asphalt Processing and Asphalt Roofing Manufacturing (40 CFR 63, Subpart LLLLL)

The commission adopts §113.1210 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart LLLLL, made by the EPA since this section was last amended. During this time frame, the EPA amended 40 CFR Part 63, Subpart LLLLL, on May 17, 2005 (70 FR 28360) and April 20, 2006 (71 FR 20446). The May 17, 2005, amendments included correction of errors in definitions and equations and added language to one other provision so that the rule language conforms to the preamble discussion to the final rule. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1220--Flexible Polyurethane Foam Fabrication Operations (40 CFR 63, Subpart MMMMM)

The commission adopts §113.1220 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart MMMMM, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart MMMMM, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1230--Hydrochloric Acid Production (40 CFR 63, Subpart NNNNN)

The commission adopts §113.1230 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart NNNNN, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart NNNNN, on April 7, 2006 (71 FR 17738) and April 20, 2006 (71 FR 20446). The April 7, 2006, amendments completed the following: updated applicability provisions; revised definitions; and updated emission standards, storage tank maintenance, notification and reporting requirements, and monitoring and leak detection and repair plans. The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1250--Engine Test Cells/Stands (40 CFR 63, Subpart PPPPP)

The commission adopts §113.1250 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart PPPPP, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart PPPPP, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1260--Friction Materials Manufacturing Facilities (40 CFR 63, Subpart QQQQQ)

The commission adopts §113.1260 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart QQQQQ, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart QQQQQ, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1270--Taconite Iron Ore Processing (40 CFR 63, Subpart RRRRR)

The commission adopts §113.1270 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart RRRRR, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart RRRRR, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1280--Refractory Products Manufacturing (40 CFR 63, Subpart SSSSS)

The commission adopts §113.1280 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart SSSSS, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Sub-

part SSSSS, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1290--Primary Magnesium Refining (40 CFR 63, Subpart TTTTT)

The commission adopts §113.1290 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart TTTTT, made by the EPA since this section was adopted. During this time frame, the EPA amended 40 CFR Part 63, Subpart TTTTT, on April 20, 2006 (71 FR 20446). The April 20, 2006, amendments revised the general and compliance requirements as they relate to startup, shutdown, and malfunctions.

Section 113.1390--Polyvinyl Chloride and Copolymers Production Area Sources (40 CFR 63, Subpart DDDDDD)

The commission adopts new §113.1390 by incorporating by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart DDDDDD, adopted by the EPA on January 23, 2007 (72 FR 2930). This MACT standard regulates HAP emissions for polyvinyl chloride and copolymers production area sources. The HAP emitted from these facilities is vinyl chloride.

Section 113.1400--Primary Copper Smelting Area Sources (40 CFR 63, Subpart EEEEEE)

The commission adopts new §113.1400 by incorporating by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart EEEEEE, adopted by the EPA on January 23, 2007 (72 FR 2930). This MACT standard regulates HAP emissions for primary copper smelting area sources. HAPs emitted from these facilities include: arsenic, cadmium, chromium, lead, and nickel.

Section 113.1410--Secondary Copper Smelting Area Sources (40 CFR 63, Subpart FFFFFF)

The commission adopts new §113.1410 by incorporating by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart FFFFFF, adopted by the EPA on January 23, 2007 (72 FR 2930). This MACT standard regulates HAP emissions for secondary copper smelting area sources. HAPs emitted from these facilities include: cadmium, lead, and dioxin.

Section 113.1420--Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (40 CFR 63, Subpart GGGGGG)

The commission adopts new §113.1420 by incorporating by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart GGGGGG, adopted by the EPA on January 23, 2007 (72 FR 2930). This MACT standard regulates HAP emissions for primary nonferrous metals area sources that produce zinc, cadmium or beryllium. HAPs emitted from these facilities include: arsenic, cadmium, lead, manganese, and nickel.

In addition, non-substantive, administrative revisions were made to Chapter 113.

FINAL REGULATORY IMPACT ASSESSMENT DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of these rules is to adopt NESHAPs for source categories mandated by 42 USC, §7412 and required to be included in operating permits by 42 USC, §7661a. These NESHAPs are technology based standards commonly referred to as MACT standards which the EPA develops to regulate emissions of hazardous air pollutants as required under the FCAA. Certain sources of hazardous air pollutants will be affected and are required to comply with federal standards whether or not the commission adopts the standards or takes delegation from the EPA. As discussed in the FISCAL NOTE portion of the proposal preamble, these rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with federal MACT standards, and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Under 42 USC, §7661a, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation or requirement under the FCAA, including NESHAPs, which are required under 42 USC, §7412. Similar to requirements in 42 USC, §7410, regarding the requirement to adopt and implement plans to attain and maintain the National Ambient Air Quality Standards (NAAQS), states are not free to ignore requirements in 42 USC, §7661a, and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that ex-

empted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed, and adopted by the commission in order to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the adopted rules do not modify the federal NESHAP, but are incorporations by reference, which do not change the federal requirements.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially un-amended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).)

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of §2001.0225.

The adopted rules implement requirements of the FCAA. The MACT standards being incorporated into state law are federal technology-based standards that are required by 42 USC §7412, required to be included in permits under 42 USC §7661a, are adopted by reference without modification or substitution, and will not exceed any standard set by state or federal law. These rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the EPA will delegate the MACTs to Texas in accord with the delegation procedures codified in 40 CFR Part 63, if this rulemaking is adopted. The amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017.

Therefore, this adoption rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, but no comments were received concerning the regulatory impact analysis determination

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole, or in part, or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for this rulemaking action under the Texas Government Code, §2007.043. The primary purpose of this rulemaking action, as discussed elsewhere in this preamble, is to adopt NESHAPs for source categories mandated by 42 USC, §7412 and required to be included in operating permits by 42 USC, §7661a and facilitate implementation and enforcement of the NESHAPs by the state. The adopted rules will not create any additional burden on private real property. Under federal law, the affected industries will be required to comply with the NESHAPs regardless of whether the commission or the EPA is the agency responsible for implementation of the NESHAPs. The adopted rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adoption rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adoption rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency de-

termination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adoption rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the adopted rules is Emission of Air Pollutants. These rules are consistent because they only incorporate by reference the federal MACT standards that pertain to certain industries and processes. The MACT standards provide the highest level of control of air emissions that is achievable taking into consideration cost and any non-air quality health and environmental impacts and energy requirements.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency of this rulemaking with the CMP during the public comment period, but no comments on the CMP were received.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 113 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the Federal Operating Permits Program must, consistent with the revision process in Chapter 122, upon the effective date of the adopted rulemaking, revise their operating permits to include the new Chapter 113 requirements.

PUBLIC COMMENT

A public hearing on the proposal was held in Austin, Texas on September 18, 2007 at the TCEQ Central Office. No comments were received at the public hearing. The commission received no written comments during the public comment period, which closed on September 24, 2007.

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act. The new and amended sections are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act.

The new and amended sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

§113.870. Plywood and Composite Wood Products (40 Code of Federal Regulations Part 63, Subpart DDDD).

The Plywood and Composite Wood Products Maximum Achievable Control Technology standard as specified in 40 Code of Federal Regulations Part 63, Subpart DDDD, is incorporated by reference as adopted July 30, 2004 (69 FR 45944) and amended February 16, 2006 (71 FR 8342), April 20, 2006 (71 FR 20446), and October 29, 2007 (72 FR 61060).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706172
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: August 24, 2007
For further information, please call: (512) 239-0177

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendments to §§114.7, 114.62, 114.64, 114.66, and 114.70 *with changes* to the proposed text as published in the August 24, 2007, issue of the *Texas Register* (32 TexReg 5315).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these revisions in order to implement requirements of Senate Bill (SB) 12, authored by the Honorable Senator Averitt, passed during the 80th Legislature, 2007. During the 77th Legislature, 2001, the legislature adopted provisions under House Bill (HB) 2134 to assist low income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. As required by HB 2134, the commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP).

On March 27, 2002, the commission adopted requirements implementing HB 2134, 77th Legislature, 2001. Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the program, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for the owner of a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, were developed and adopted by the commission. Emission-related repairs

covered by the program are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the program themselves or contract with a private entity or another county to administer the program. The 2001 law stated that participating counties could expend no more than five percent of the funds received from the state for administrative costs. These rules provided for a minimum of $30 and a maximum amount of $600 for emission-related repairs, retrofit equipment, and installation; and a minimum of $600 and a maximum amount of $1,000 toward the purchase price of a replacement vehicle.

During the 79th Legislature, 2005, the legislature adopted HB 1611, revising three key elements of the program. The legislation allowed for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783 (relating to Uniform Grant and Contract Management) and allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for participating counties to utilize additional resources to attract and increase program participation. The legislation removed the requirement that capped administrative costs at five percent of the funds provided to a county. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. The revision increased participation by making assistance available to those vehicle owners who have lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 on April 12, 2006.

During the 80th Legislature, 2007, the legislature adopted SB 12, revising elements of the I/M program and LIRAP requirements. Revisions include enhanced capabilities for the retirement of old vehicles and their replacement with new vehicles. Old vehicle requirements include: gasoline-powered and older than ten years; owner financial eligibility requirements (up to 300 percent of federal poverty level); operated and registered in the implementing county for 12 months preceding the application; and passing the DPS safety or safety and emissions inspection within 15 months of application. The legislation also provided for replacement assistance for owners of vehicles passing the required I/M program acceleration simulation mode (ASM) emissions test but that would have failed the more stringent United States Environmental Protection Agency (EPA) Final ASM standards (also known as "final cut-points") emissions test. The revised maximum amounts for a new replacement vehicle are $3,000 for a car, current model year and up to three model years old; $3,000 for a truck, current model year and up to two model years old; $3,500 for a hybrid vehicle of current or previous model year. The new vehicle must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that does not exceed $25,000.

SB 12 requires that dealers participating in the program and taking possession of the old vehicle submit proof that the vehicle has been retired. The vehicle retirement facility is required to destroy the emissions control equipment and engine and certify that those parts have been destroyed and not resold in the marketplace. Mercury switches must also be removed in accordance with any state and federal laws. The commission has included language to highlight concerns regarding fraud to ensure the vehicle retirement facilities have a clear understanding of the potential enforcement consequences. The legislation provided language that requires dealers and dismantlers participating in the program to be located in the state.

Additional revisions include limiting funding for administration and program costs of the local LIRAP to 10 percent of the money provided for the local program and requiring participating LIRAP counties to provide an electronic means for distributing funds for vehicle repairs or replacements. The county shall ensure that funds are transferred to a participating dealer not later than five business days after the sale of a replacement vehicle is completed. The legislation also requires that the commission establish procedures for a document confirming that the person is eligible to purchase a replacement vehicle, that the person applying for vehicle replacement has the document to participate in replacement, and that a dealer that relies on the document has no duty to confirm eligibility. New legislation amended current LIRAP definitions to include "Destroy," "Motor vehicle," "Hybrid motor vehicle," "Qualifying motor vehicle," "Emissions control equipment," "Dealer," "Automobile dealership," "Total cost," "Engine," and "Replacement vehicle." New definitions for "Truck" and "Car" are also adopted to determine the vehicle model types that are associated with "truck" and "car" categories. To clarify when a transaction has occurred that finalizes the sale of a vehicle, and in response to comment, a definition for "Proof of sale" has been included in this adoption. To clarify the five business day reimbursement to automobile dealers requirement, a definition of "Proof of transfer" has been included in this adoption.

The legislation also authorizes the appropriation of $5 million per fiscal year from LIRAP funds, on a matching basis, to administer LIRAP Local Initiative Projects. The projects must be implemented in consultation with the commission and may include expanding and enhancing AirCheckTexas; developing and implementing programs to remotely determine vehicle emissions and notify the vehicle's operator; developing and implementing projects to implement the commission's smoking vehicle program; developing and implementing projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection stickers; developing and implementing programs to enhance transportation system improvements; or developing and implementing new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

Grammatical, stylistic, and other non-substantive corrections are made throughout the rulemaking to be consistent with *Texas Register* requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual,* August 2006. Such changes include appropriate and consistent use of acronyms, section references, and certain terminology such as "shall" and "must." These changes are not discussed further.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

§114.7 Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions

The adopted amendments to §114.7, Low Income Vehicle Repair, Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions, include adding and defining the following terms: automobile dealership, car, emissions control equipment, engine, hybrid motor vehicle, motor vehicle, qualifying motor vehicle, total cost, and truck. The commission adopts definitions for hybrid motor vehicle, motor vehicle, qualifying motor vehicle, and total cost as the terms are defined by SB 12. The legislation requires the commission to adopt rules defining emissions control equipment and engine. The commission has elected to de-

fine automobile dealership, car, and truck. The adopted rule defines "automobile dealership" following similar provisions in the Texas Transportation Code, §503.301. The definitions of "car," "truck" and "hybrid motor vehicle" have been added to clarify the new compensation amounts for a replacement vehicle, which are: $3,000 for a car, current model year or up to three model years old; $3,000 for a truck, current model year or up to two model years old; and $3500 for a hybrid motor vehicle of the current model year or the previous model year. The definition of "destroy" has been amended to include the word "scrapped" and clarify the disposition of engine and emission control components. The commission has amended the definition of "replacement vehicle" to meet the new vehicle qualifying requirements found in SB 12. In response to comments, the commission has also adopted definitions for "proof of sale" and "proof of transfer" to clarify the process for replacement reimbursement to automobile dealers. The adoption also renumbers the LIRAP definitions section to make adjustments for the adopted new definitions.

Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 2, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program

§114.62, LIRAP Funding

The adopted amendment to §114.62 will add subsection (d) to include the LIRAP funding limit for administration and program costs of the LIRAP to not more than 10 percent of the money provided as stated in SB 12.

§114.64, LIRAP Requirements

The adopted amendment to §114.64(b)(5) changes a vehicle owner's net family income eligibility from 200 percent to 300 percent of the federal poverty level. This change increases the income eligibility amount for LIRAP participants.

The adopted amendments to §114.64(c) would restructure all existing eligibility application requirements currently under paragraphs (1), (2), and (3) into one new paragraph (1). Old paragraphs (1), (2), and (3) have been relettered as subparagraphs (A), (B), and (C). New paragraphs (2), (3), and (4) have been added to §114.64(c). Adopted §114.64(c)(2) would include pre-1996 model year vehicles undergoing an ASM emissions test as part of the I/M program to become eligible for LIRAP assistance if the vehicle passes the state's current test standards, but would have failed the more stringent standards known as EPA Final Cut-Points. The commission requested public comment specific to whether Final Cut-Points should be adopted for the ASM emissions test performed on gasoline-powered, model year 1995 and older vehicles. The executive director has assessed the impact of implementing final cut-points and recognized that due to the current failure rate of 9% escalating to over 30% for this older group of vehicles, the ownership of older model vehicles by low income individuals, and the continuing diminishing fleet of older vehicles, the implementation of final cut-points is not warranted. In addition, all vehicle owners that would be subject to final cut-points are already eligible to participate in the program if they meet income eligibility requirements because the affected vehicles are more than 10 years old. Adopted §114.64(c)(3) will enhance capabilities for the retirement of vehicles. A gasoline-powered motor vehicle is eligible now for replacement if the vehicle is at least 10 years old and the owner meets the financial eligibility requirements (up to 300 percent of the federal poverty level). Adopted §114.64(c)(4)(A) - (D) sets criteria for replacement vehicles. A new replacement vehicle must meet federal Tier 2, or Bin 5 or cleaner emission standards, have a gross vehicle weight rating of less than 10,000 pounds, have a total purchase cost that does not exceed $25,000, and have passed a Department of Public Safety (DPS) motor vehicle safety inspection or safety and emissions inspection within a 15-month period before the application is submitted.

The adopted amendment to §114.64(d)(1)(B) would delete the previous requirements related to vehicle compensation and replace them with the new requirements set forth by SB 12. Subsequent to close of the public comment period the commission determined that to address fraud concerns, only one retirement compensation can be used toward one replacement vehicle annually per applicant. The revision will include adding clauses (i), (ii), and (iii). The new compensation amounts for a replacement vehicle are: $3,000 for a car, current model year or up to three model years old; $3,000 for a truck, current model year or up to two model years old; and $3,500 for a hybrid vehicle of current or previous model year. The adopted revision to §114.64(d)(3) deletes the phrase *maximum and minimum* and replaces it with *compensation.* The revision is necessary to bring rule language into agreement with the new adopted revised compensation requirements in §114.64(d)(1)(B)(i), (ii), and (iii).

The adopted amendment to §114.64(e) includes changing the title from *Reimbursement* to *Reimbursement for Repairs and Retrofit* to correctly reflect the modified content in the subsection. In response to comment, the commission has determined that the county may continue to reimburse the appropriate emission repair facilities within 30 calendar days for emission related repairs and retrofits.

Adopted §114.64(f), Reimbursements for replacements, requires that a participating county distribute vehicle replacement funds to a participating automobile dealership no later than five business days after the date the county receives proof of the sale and the required administrative documents as defined in the agreements between the automobile dealerships and program administrators. A list of the administrative documents must be included in the agreements entered into between the counties or program areas and the automobile dealers. Adopted §114.64(f)(1) requires a participating county provide an electronic means for distributing vehicle replacement funds within five business days as stated in §114.64(f). Automobile dealerships participating in the program must be located in the state and participation in LIRAP by an automobile dealership is voluntary. The language also allows automobile dealerships participating in the program to accept funds provided under LIRAP as a down payment towards the purchase of a replacement vehicle.

Adopted §114.64(f)(2) requires participating counties to develop a document to be used to confirm that a person is eligible to purchase a replacement vehicle. Adopted §114.64(f)(2)(A) requires that the document must include, at a minimum, the full name of the applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the participating county's contact information, and the amount of money available to the purchaser. Adopted §114.64(f)(2)(B) requires the purchaser to have the document before the person enters into negotiations with a dealer for a replacement vehicle and adopted §114.64(f)(2)(C) provides that a participating dealer who relies on the document has no duty to confirm eligibility of the person purchasing a replacement vehicle.

§114.66, Disposition of Retired Vehicle

The adopted amendment to §114.66 revises subsections (a) and (b) and adds subsections (c) - (e). The adopted §114.66(a) includes language requiring dismantlers participating in the program be located in the state. The adopted §114.66(b) provides vehicle disposition requirements. The adopted §114.66(c) includes language that requires dismantlers taking possession of the old vehicle to destroy the emissions control equipment and engine and certify that those parts have been destroyed and not resold into the marketplace. The adoption includes language requiring the dismantlers to remove any mercury switches and to comply with any state and federal laws applicable to the management of those mercury switches. The commission encourages all dismantlers to participate in the National Vehicle Mercury Switch Recovery Program in the removal of mercury switches from non-program vehicles. In response to comments, the commission has determined that the automobile dealer should submit to the participating county or designated entity proof of destruction from the dismantler. Adopted §114.66(d) requires the dismantler to provide certification to the automobile dealer that the retired vehicle has been destroyed. Adopted §114.66(e) requires the dismantler to provide the residual scrap metal of a retired vehicle to a recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

§114.70, Records, Audits, and Enforcement

Adopted §114.70(f) requires participating vehicle retirement facilities to certify that the equipment and engine have been destroyed and not resold into the marketplace. A violation of this requirement is subject to civil penalty under Texas Water Code, Subchapter D, Chapter 7 for each violation. Subsequent to the close of the public comment period, the commission determined that to more accurately determine the success of the program, replacement vehicle data should be reported along with retirement vehicle information. This new requirement is located in §114.70(b)(8).

Administrative and grammatical changes are made throughout the rules to bring existing rule language into agreement with Texas Register requirements, agency format guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual,* August 2006.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adoption implements SB 12 by providing revisions for elements of LIRAP. The adoption addresses issues related to vehicle air emissions and increasing LIRAP participation. The adoption implements changes to eligibility criteria to increase participation and implements legislation aimed at providing incentives for vehicle owners to retire older vehicles and replace with newer cleaner running vehicles. The rules are intended to protect the environment or reduce risks to human health from environmental exposure to ozone by assisting low income motorists in repairing, retrofitting, or retiring vehicles that have failed an emissions test under the state's vehicle emissions I/M program. As such, these rules do not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or sector of the state. Therefore, the adoption does not meet the definition of a "major environmental rule."

In addition, a regulatory impact analysis is not required because the adopted rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted technical requirements are consistent with applicable federal standards. In addition, this rulemaking does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this adoption does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission solicited comments on the Regulatory Impact Analysis Determination during the comment period and received comments during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adoption action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with SB 12. These amendments revise requirements for a voluntary program and only affect motor vehicles that are not considered to be private real property. Therefore, promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adoption and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adoption is consistent with the applicable CMP goals and policies. The CMP goal applicable to the adopted rule is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the adopted rule is the policy that commission rules comply with federal regulations in 40 Code of Federal

Regulations to protect and enhance air quality in the coastal area (31 TAC §501.14(q)).

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adoption does not authorize any new air contaminants and is intended to provide enhanced I/M program and LIRAP strategies. Therefore, this rulemaking is consistent with the applicable policy and goal.

PUBLIC COMMENT

The commission held public hearings on September 11, 2007, in Arlington, Austin, and Houston. The comment period closed on September 12, 2007. The commission received oral comments at the public hearings from the Lone Star Chapter of the Sierra Club (Sierra Club) and the North Central Texas Council of Governments (NCTCOG). The commission received written comments from the City of Dallas, Commercial Metals Company (CMC), Fort Worth Chamber of Commerce (Fort Worth Chamber), Greater Dallas Chamber (Dallas Chamber), NCTCOG, Nucor, Inc. (Nucor), Texas Automobile Dealers Association (TADA), Travis County Transportation and Natural Resources Department (Travis County), Sierra Club, and the United States Environmental Protection Agency (EPA).

RESPONSE TO COMMENTS

Fort Worth Chamber supported the proposed revisions and commented that adjustments to the LIRAP would allow more North Texans to participate and benefit from the program.

The commission appreciates the Fort Worth Chamber's support in this action and made no changes to the rules as a result of this comment.

The EPA supported the proposed revisions to the rules because they strengthen and clarify the LIRAP and scrappage program. The EPA further commented that although these rules are not a part of the approved state implementation plan (SIP), these programs will contribute to the enhancement of air quality in the nonattainment areas where they are implemented.

The commission appreciates the EPA's support of this rulemaking. The LIRAP provides repair assistance to ensure vehicles in the nonattainment areas operate at their designed emissions standards. The commission made no changes to the rules as a result of this comment.

TADA commented that access to a list of eligible vehicles that can be sold to a person using a replacement voucher would make the program more efficient.

The commission is committed to providing information to automobile dealers that makes it convenient for them to determine whether a vehicle is eligible for sale while redeeming a replacement voucher. A list of vehicles that meet the requirements of the federal Tier 2, Bin 5 standards and have a Gross Vehicle Weight Rating of less than 10,000 pounds will be maintained on the commission's vehicle replacement program website. The commission made no changes to the rules as a result of this comment.

The City of Dallas supports the proposed changes to the vehicle owner eligibility criteria that will allow for more participation in the program as well as provide a greater incentive for the retirement of high emitting vehicles.

The commission appreciates the City of Dallas' support for this rulemaking. Changing the vehicle owner's income eligibility requirement from 200% of the federal poverty rate to 300% of the federal poverty rate will allow approximately 1.9 million families eligible for participation in the program. To ensure funding is available to a maximum number of participants, the commission has revised §114.64(d)(1)(B) to limit replacement compensation annually per applicant.

The City of Dallas and the Dallas Chamber commented that providing more flexible options for purchasing vehicles to be considered for low income families would reduce the challenges that some of these families may face in having to purchase a new or three-year-old vehicle. Although supportive of the increase in retirement incentive and the inclusion of hybrid vehicles as a type of replacement, they are concerned that the eligible vehicle replacement requirements may prevent a large number of qualified families from participating.

The provisions establishing replacement vehicle eligibility and maximum payment incentives are set by statute under Texas Health and Safety Code, §382.210(a)(2) as amended by SB 12. Although newer vehicles may have a higher purchase price, vehicle owners purchasing them should realize cost savings in maintenance and repairs and see improved fuel economy. These savings may off-set the costs of the purchase. The commission made no changes to the rules as a result of this comment.

The Sierra Club commented that additional language was needed in the rule to clarify that counties may offer a graduated incentive for replacement vehicle vouchers.

The commission has reviewed this comment and maintains that counties are allowed to offer a graduated incentive for replacement vehicle vouchers by language defined in §114.64(d)(1)(B) in the last sentence of the paragraph that states: "The maximum amount toward a replacement vehicle, shall not exceed: . . ." The commission made no changes to the rules as a result of this comment.

The Sierra Club expressed concern that a purchaser might possibly be prohibited from participating in the replacement program if he/she did not obtain a replacement voucher prior to entering into negotiations with a dealer for a replacement vehicle.

The commission has reviewed this comment and has determined that the language in §114.64(f)(2)(B) does not prohibit an automobile dealer from informing a participant about the vehicle replacement program financial assistance and then continuing sale negotiations after a determination is made whether the purchaser is or is not eligible for replacement program financial assistance. The rule requirement is necessary to ensure that all eligibility requirements have been fulfilled and that all parties are aware of the type and method of transaction that will take place. The commission made no changes to the rules as a result of this comment.

CMC commented that language in §114.66(c) stating that "The dismantler shall remove any mercury switches in accordance with any state and federal laws" may be understood by dismantlers as being a discretionary requirement of the program should there be no current federal or state laws requiring removal. CMC commented that mercury switches should be removed in accordance with rules or laws that apply to their removal such as Universal Waste rule or rules relating to prohibition of unauthorized discharges. CMC further commented that the commission should identify in the preamble the National Vehicle Mercury

Switch Recovery Program as the national program under which mercury switch removal is currently administered.

As a result of this comment, the commission has changed the rule to require the dismantler to remove any mercury switches and comply with state and federal laws applicable to the management of those mercury switches.

City of Dallas, NCTCOG, and the Sierra Club commented that the vehicle inspection and maintenance program should implement EPA final acceleration simulation mode (ASM) emission standards also known as "final cut-points" to ensure that vehicles are passing a more stringent test that more accurately measure a vehicle's emissions. The Sierra Club further commented that a reasonable time for adjustment to the new requirement should be provided to testing centers and vehicle owners; however, the commission should move to implement final cut-point standards as soon as technically feasible.

The commission acknowledges the comments were made in response to its request during the proposal period specific to whether transition to final cut-points should be considered for the ASM emissions test performed on gasoline-powered, model year 1995 and older vehicles. The executive director has assessed the impact of implementing final cut-points and recognized that due to the projected increase in the 9% failure rate currently to over 30%, the likelihood that these older model vehicles are owned by low income individuals, and the continuing diminishing fleet of older vehicles, the implementation of final cut-points is not warranted. In addition, all vehicles that are subject to final cut-points are already eligible to participate in the program because they are older than 10 model years.

NCTCOG requested that the commission formally define §114.62(d), relating to LIRAP Funding.

The commission has reviewed the language in this paragraph and has determined the language clearly describes that not more than 10% of money from each TCEQ distribution provided for LIRAP may be used for administration of the program. The commission made no changes to the rules as a result of this comment.

NCTCOG commented that local county government officials have expressed concerns over the requirement that funds for Local Initiative Projects are only available if matching funds are provided by the county. The local government officials have stated that since funding for these projects is made through funds that were originally collected from their counties, requiring these fund be matched is essentially "double-taxation."

The provisions related to the Local Initiative Projects including requiring matching funds is established in statute and is not part of this rulemaking project. The comment is beyond the scope of this rulemaking. The commission made no changes to the rules as a result of this comment.

NCTCOG commented that replacement vehicle program structure in the rule places purchasing restrictions on eligible replacement vehicles that may limit the number of low income families that are able to take advantage of the replacement component of the program.

The provisions establishing replacement vehicle eligibility and maximum payment incentives are set by statute under Texas Health and Safety Code, §382.210(a)(2) by SB 12. However, participating counties have the flexibility to enhance financial assistance if desired on the local level to low income individuals through the use of other funds, such as the Local Initiatives Projects. The commission made no changes to the rules as a result of this comment.

Nucor commented that they support revisions to LIRAP and requested the commission to create a process requiring shredders to be part of the destruction process prior to reaching a recycling facility.

Vehicles retired through this program will be forfeited at the dealership where the replacement is purchased, then sent to the dismantler, who takes the first step that renders the vehicle in a condition that prevents it from returning to operation on Texas highways. The dismantler will destroy the engine and emission control parts, salvage remaining useable parts, destroy the vehicle and make the residual scrap metal available to recyclers. Nucor's request that a retirement process that includes shredders be established by rule is beyond the scope of the agency's statutory authority. The commission made no changes to the rules as a result of this comment.

Nucor requested that language be modified to require that 90% of vehicles retired under the LIRAP are provided to a recycling facility in a county in the state of Texas where average family income is no greater than the amount prescribed in Texas Health and Safety Code, §382.210(a)(3)(A), for a family of two.

The commission has determined that Nucor's request is beyond the scope of the agency's statutory authority and this rulemaking. The commission made no changes to the rules as a result of this comment.

TADA commented that clarification of the term "proof of sale" was needed because it is a component of the dealer reimbursement mechanism and the term "sale" is a component of a process and not a term that carries legal implications. TADA recommended that a definition of "proof of sale" would make that component of the process more certain.

The commission agrees with the comment and has added a definition of "proof of sale" to provide additional clarification that will make this important part of the replacement process more certain. The definition in §114.7(14) is: "Proof of sale" - A notice of sale or transfer filed with the Texas Department of Transportation as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

TADA commented that providing clarification in the rules of what specific type(s) of administrative documents are acceptable to meet the requirements of §114.64(f) and determine if those documents will meet county or designated entity requirements is necessary to avoid confusion and establish a clear process for reimbursement. Without this determination, TADA commented that counties would be able to add additional requirements. Clarifying this requirement would streamline the process.

The commission recognizes that participating counties may need administrative documents such as vehicle title and registration documents submitted to confirm that reimbursement for a voucher should be approved. Because there are many variations of these types of documents that may provide the necessary information and the local participating counties may choose to accept, modifications of the proposed language to list specific documents would hinder the efficiency of the program. However as a result of this comment, the commission has made a change to the rule. Section 114.64(f) has been revised to include language that agreements between the county or

designated entity and a dealership will include all administrative documents.

TADA commented on the delays for reimbursement to the participating dealerships that may be created by the requirement that participating dealers certify that a retired vehicle has been destroyed as part of the reimbursement process. TADA comments that this requirement is not included or inferred in the legislation.

The commission recognizes that requiring certification that the entire vehicle has been destroyed before the automobile dealership can submit the voucher for reimbursement and begin the five business day clock may create a disincentive for participation. Thus, the commission has revised the requirements to require proof of transfer to a dismantler. A definition of "proof of transfer" was added in §114.7 to further provide clarity.

Travis County commented that §114.65(e) requiring counties to reimburse emissions facilities within five business days of receiving an invoice that meets requirements should be revised because it conflicts with statutory requirements under the Local Government Code.

The commission agrees with the comment and has revised rule language to allow counties to continue making reimbursement payments for emissions related repairs to participating Recognized Emissions Repair Facilities in accordance with the current rule language. Counties will still be required to make reimbursement payments to participating automobile dealers for replacement vehicles as required by the legislation and this rulemaking.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.7

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §§382.201 - 382.218, 382.301 - 382.302, which provide the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the Federal Clean Air Act (42 United States Code, §§7401 *et seq.),* to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, and to fund the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). Finally, the amendment is adopted as part of the implementation of SB 12, 80th Legislature, 2007.

The adopted amendment implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.201 - 382.218, 382.301 - 382.302, and provisions of SB 12, 80th Legislature, 2007.

§114.7. Low Income Vehicle Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter C, Division 2, of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.

(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(3) Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(4) Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program or sold as used parts.

(7) Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(8) Engine--The fuel-based power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(9) Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(10) Hybrid motor vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(11) LIRAP--Low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

(12) Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(13) Participating county--An affected county in which the commissioners court by resolution has chosen to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Texas Health and Safety Code, §382.209.

(14) Proof of sale--A notice of sale or transfer filed with the Texas Department of Transportation as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(15) Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, automobile dealer, and dismantler.

(16) Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(17) Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.93, relating to Vehicle Emissions Inspection Requirements.

(18) Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(19) Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register;* has a gross vehicle weight rating of less than 10,000 pounds; the total cost does not exceed $25,000 and has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(20) Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(21) Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(22) Total cost--The total amount money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(23) Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(24) Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(25) Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(26) Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Transportation to destroy, recycle, or dismantle vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 2. LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

30 TAC §§114.62, 114.64, 114.66, 114.70

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also adopted under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §§382.201 - 382.218, 382.301 - 382.302, which provide the commission the authority by rule to establish, implement, and

administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 United States Code, §§7401 *et seq.),* to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the National Ambient Air Quality Standards, and to fund the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). Finally, the amendments are adopted as part of the implementation of SB 12, 80th Legislature, 2007.

The adopted amendments implement TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.201 - 382.218, 382.301 - 382.302, and provisions of SB 12, 80th Legislature, 2007.

§114.62. LIRAP Funding.

(a) The executive director shall provide funding for the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) with available funds from fees collected under §114.53 of this title (relating to Inspection and Maintenance Fees) or other designated and available funds.

(b) The program shall be administered in accordance with Texas Government Code, Chapter 783. Programmatic costs may include call-center management, application oversight, invoice analysis, education, outreach, and advertising.

(c) A participating county shall receive, to the extent practicable, funding in reasonable proportion to the amount in fees collected in the affected county or area from emissions testing fees designated by the commission.

(d) In a county with a vehicle emissions inspection and maintenance program under Texas Health and Safety Code, §382.202 or §382.302, not more than 10 percent of the money provided for LIRAP may be used for administration of the program.

§114.64. LIRAP Requirements.

(a) Implementation. Upon receiving a written request to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) by a county commissioners court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a vehicle emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the program county for the 12 months immediately preceding the application for assistance;

(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;

(5) the vehicle owner's net family income is at or below 300 percent of the federal poverty level; and

(6) any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(A) the vehicle meets the requirements under subsection (b)(1) - (3) and (5) of this section;

(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and

(C) any other requirements of the participating county or the executive director are met.

(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.

(3) Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2007 minus 10 years equals 1997) and meets the requirements under subsection (b)(2), (3), and (5) of this section, may be eligible for accelerated vehicle retirement and compensation.

(4) Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FedReg 6698);

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) be a vehicle the total cost of which does not exceed $25,000; and

(D) have passed a DPS motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than $600 and no less than $30 per vehicle to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle, must not exceed:

(i) $3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;

(iii) $3,500 for a replacement hybrid vehicle of the current model year or the previous model year.

(2) Vehicle owners shall be responsible for paying the first $30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating automobile dealership no later than five business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating automobile dealerships.

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in LIRAP by an automobile dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

§114.66. Disposition of Retired Vehicle.

(a) Vehicles retired under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) may not be resold or reused in their entirety in this or another state. Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in the state of Texas.

(b) The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the LIRAP;

(4) placed in a storage facility and subsequently destroyed, recycled, or dismantled within 12 months of the vehicle retirement date and its parts sold or used in the LIRAP; or

(5) repaired, brought into compliance, and used as a replacement vehicle under this division. Not more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.

(c) Notwithstanding subsection (b) of this section, the dismantler of a vehicle shall destroy the emissions control equipment and engine, certify those parts have been destroyed and not resold into the market place. The dismantler shall remove any mercury switches and

shall comply with state and federal laws applicable to the management of those mercury switches.

(d) The dismantler shall provide certification that the vehicle has been destroyed to the automobile dealer from whom the dismantler has taken receipt of a vehicle for retirement. The automobile dealer shall submit to the participating county or its designated entity the proof of destruction from the dismantler.

(e) The dismantler shall provide the residual scrap metal of a retired vehicle under this section to a recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

§114.70. Records, Audits, and Enforcement.

(a) A participating county shall submit quarterly audit reports to ensure that the funds provided to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) have been used in accordance with requirements of this division. The quarterly reports (September - November, December - February, March - May, June - August) must be transmitted to the executive director in paper copies or in an electronic database format to be determined by mutual agreement between the state and the participating county no later than 30 days after the end of the quarter.

(b) At a minimum, the quarterly reports must include the following:

(1) name of the county department or entity implementing the program and their mailing address;

(2) name of the official representative of the county department or entity;

(3) amount of funds received during the reporting period;

(4) amount distributed for repair assistance, retrofitting, accelerated retirement, and administrative costs;

(5) information regarding the recognized emissions repair facilities and vehicle retirement facilities participating in the LIRAP, including the number of approved assistance transactions, the amount of each transaction, and the total amounts paid to each facility;

(6) pending amount of funds that must be paid out;

(7) information for each vehicle participating in program, including:

(A) vehicle identification number (VIN);

(B) vehicle license plate number;

(C) name and business address of the Texas Department of Public Safety recognized emissions repair facility or vehicle retirement facility; and

(D) date of vehicle repair, retrofit, or retirement; and

(8) information for each replacement vehicle including:

(A) vehicle identification number (VIN);

(B) make of vehicle;

(C) model year;

(D) odometer reading;

(E) name and business address of seller; and

(9) any other information requested by the executive director.

(c) Records on LIRAP must be maintained for a minimum period of three years by a participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility. Such records must be available upon request by the executive director for auditing purposes.

(d) A participating county, its designated entity, a participating recognized emissions repair facility, and a participating vehicle retirement facility shall allow the executive director to conduct audits and inspections.

(e) A person who, with intent to defraud, sells a vehicle in an accelerated vehicle retirement program under LIRAP commits an offense that is classified as a third degree felony.

(f) A person who causes, suffers, allows, or permits a violation of §114.66(c) and (d) of this title (relating to Disposition of Retired Vehicle) is subject to a civil penalty under Texas Water Code, Subchapter D, Chapter 7, for each violation. A separate violation occurs with each fraudulent certification or prohibited resale.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6091

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (board) adopts new 31 TAC §363.1006 of Subchapter J, relating to the State Participation Program, and §§363.1201, 363.1202, 363.1203, 363.1206, 363.1207 and 363.1208, relating to the Water Infrastructure Fund, *with changes* to the proposed text as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7379). Amendments to 31 TAC §§363.1, 363.2, 363.11 - 363.16, 363.18, 363.32, 363.33, 363.41 - 363.43 and 363.55, and new §363.19 of Subchapter A, relating to General Provisions, §§363.502 - 363.505 and 363.507 and new §363.512 of Subchapter E, concerning the Economically Distressed Areas Program (EDAP), §§363.1002 - 363.1004, 363.1014 and 363.1017 of Subchapter J, relating to the State Participation Program, new Subchapter L, §§363.1204, 363.1205, and 363.1209 - 363.1210, relating to the Water Infrastructure Fund, and the repeal 31 TAC §§363.201, 363.202, 363.204 - 363.209, 363.221 - 363.226, 363.241, and 363.242 of Subchapter B, relating to the State Water Pollution Control Revolving Fund program are adopted *without changes* to the proposed text and will not be republished.

Amendments to 31 TAC §§363.1, 363.2, 363.11 - 363.16, 363.18, 363.32, 363.33, 363.42, 363.43, and 363.55 and new §363.19 of Subchapter A, relating to General Provisions, ensure consistency with recent statutory amendments made to Chapter 16, Texas Water Code, relating to the State Participation Program and the Water Infrastructure Fund, and with other board rules relating to the processing of applications for financial assistance.

The rules in 31 TAC §§363.201, 363.202, 363.204 - 363.209, 363.221 - 363.226, 363.241, and 363.242 of Subchapter B, relating to the State Water Pollution Control Revolving Fund program, are repealed because they have been superseded by the board's adoption of rules in 31 TAC Chapter 375, relating to the Clean Water State Revolving Fund, and are therefore no longer necessary.

Amendments to 31 TAC §§363.502 - 363.505 and 363.507 and new §363.512 of Subchapter E, concerning the Economically Distressed Areas Program (EDAP) are made in response to legislation passed during the 80th Legislature, to correct inconsistencies in the current rules, and to align funding of EDAP projects with the state water plan.

The board adopts amendments to 31 TAC §§363.1002 - 363.1004, 363.1006, 363.1007, 363.1014 and 363.1017 of Subchapter J, relating to the State Participation Program, to reflect recent statutory amendments, to outline the prioritization process that will be used in ranking projects seeking financial assistance from the State Participation Program and to better define the procedures that will be used by the board when it processes these applications for financial assistance.

Finally, The board adopts new Subchapter L, §§363.1201 - 363.1210, relating to the Water Infrastructure Fund, to implement certain recent statutory amendments relating to the Water Infrastructure Fund and to ensure consistency with the board's other funding program rules.

Public Comment

Public Comments were filed by Senator Kip Averitt, the Chairman of the Senate Committee on Natural Resources, the Greater Texoma Utility Authority, Falls County Committee for Economic Development, Falls County Water Control and Improvement District #1, Somervell County Water District, Tarrant Regional Water District, Freese and Nichols, Inc. and the Sierra Club's Lone Star Chapter.

Comments

One commenter filed comments relating to the need for public comment when the Executive Administrator determines that particular projects are approvable under an abbreviated environmental review, such as a categorical exclusion. Specifically, this commenter argues that 31 TAC §363.14 (relating to Environmental Assessment) should be amended to require the Executive Administrator to provide public notice via the *Texas Register* and the agency's website when the relevant regulatory agencies are notified of the intent to exclude proposed projects from further environmental review. In addition, this commenter argues that the Executive Administrator should provide an opportunity for public comment on any intended exclusions (i.e.; categorical exclusions) within 30 days after notice is published in the *Texas Register* or posted on the agency's website, whichever occurs last.

Response to Comments

The Texas Water Code does not require the Board to provide notice to the public when the Executive Administrator notifies relevant federal and state regulatory agencies of the intent to exclude a proposed project from further, environmental review. Moreover, the Executive Administrator is given discretion regarding when an abbreviated review is appropriate. Therefore, the proposed rules will not be revised to require that the Executive Administrator give notice of a categorical exclusion determination.

Comments

One commenter supports the proposed amendments to 31 TAC §363.15 (relating to Required Water Conservation Plan) that requires applicants to submit their water conservation plan with the application for financial assistance as well as the proposed requirement that the goals for water loss programs be specified in terms of gallons per capita per day. However, this commenter suggests that these requirements be further strengthened by requiring applicants to affirm or certify in their water conservation plans that they have consulted the Board's *Water Conservation Best Management Practices Guide* and to further require applicants to explain why certain best management practices were chosen rather than others.

Response to Comments

The Board's *Water Conservation Best Management Practices Guide* is intended to provide guidance and is not a definitive list of best management practices. The definition of best management practices in §11.002(20), Water Code, as added in the 80th legislative session, explicitly states that they are "voluntary" measures. Current procedures for staff review of conservation plans are adequate. No change will be made to the rule as proposed.

Comments

Three commenters filed comments regarding the limitation on river authorities and special law districts that will be eligible to receive funding under proposed §363.1202(1).

Response to Comments

Board staff analyzed this issue further and has modified the language in §363.1202(1)(C) so that all river authorities and special law districts (that is, districts that are created by specific acts of the legislature) are considered eligible political subdivisions. The board has determined that a reasonable reading of the statute would be that the legislature did not intend to repeal §15.971(1)(c) in its entirety in 2003 when it repealed §9.010(b) of the Water Code. To exclude river authorities and special law districts from eligibility for WIF eliminates a whole class of potential WIF participants that the legislature originally included as eligible for WIF. No reason was given by the legislature for limiting the eligibility for the WIF to the specific participants set out in §9.010(b). Therefore, the board adopts language that allows all special law districts and river authorities to participate in the WIF program without the limitation imposed by §9.010(b), now repealed. Section 363.1202(1) has been revised to remove the list of specific river authorities and special law districts.

Comments

Four commenters noted that the proposed language in §363.1206(b) appears to prohibit funding for reservoirs through the WIF.

Response to Comments

Reservoir planning, design, and construction activities are specifically envisioned by the WIF. An applicant may not, however, use the pre-design funding option to fund construction activities. Section 363.1206 addresses only the pre-design funding option and it is this option to which §363.1206(b) refers. Consequently, no changes in the rule have been made.

Comments

One commenter expressed concern that certain water conservation prioritization criteria were deleted in the proposed rules under 31 TAC §363.1007 (relating to Prioritization Criteria for State Participation Program). These prioritization criteria were in the form of points that were awarded to applicants with water conservation plans that contained certain specified elements.

Response to Comments

The board, in response to these and other comments, has established a uniform ranking system based on criteria that include water conservation as a key component. Current procedures for staff review of conservation planning are adequate without the point system and the board believes that this new prioritization system will be less cumbersome, easier to administer and will achieve the desired result of properly prioritizing water conservation activities. No change will be made to the rule as proposed.

Comments

One commenter opposed the proposed amendments to §363.1006 that would give priority for financial assistance to a project that has "received legislative designation" noting that the statutory language of Texas Water Code §16.051(f) and (g) does not direct the Board to give priority to projects associated with legislative designations and does not authorize the Board to set such priorities.

Response to Comments

In response to this comment, that Board has adopted §363.1006 with amendments that delete the references to legislative designation because the prioritization system established in §363.1007 already prioritizes new, useable water supply projects identified in the state water plan.

Comments

One commenter provided comments regarding the deletion of the point system in §363.1007. This commenter suggested that the board reconsider the wholesale elimination of the specific elements in the point system to see which ones are still relevant and which ones may be discarded because of subsequent legislative requirements.

Response to Comments

Staff does not recommend changing §363.1007 in response to this comment. The point system attempted to order applications for available funds based on need and the applicant's conservation planning. In practice, the system was cumbersome, difficult to administer, and did not necessarily achieve the desired results of more effective conservation planning efforts. Proposed §363.1007 simplifies the prioritization process by addressing the importance of conservation planning more directly and in a manner that is consistent with Legislative goals. Therefore, the board adopts §363.1007 as proposed.

Comments

One commenter opposed proposed §363.1207(c) because it would give priority for financial assistance to projects that have received "legislative designation".

Response to Comments

The board has given long-standing consideration in its rules and Board actions to prioritizing matters that receive direct legislative attention. In addition, those projects identified in the water plan with the earliest, identifiable need will be prioritized in accordance with proposed §363.1208, as modified by the board. Because there is no need to further prioritize these projects based on legislative designations pursuant to §16.051(f) and (g), Water Code, the board has adopted a modified version of §363.1207(c) that eliminates the references to legislative designation.

Comments

Three commenters commented that land acquisition and right-of-way are necessary parts of any reservoir project and should be eligible for funding.

Response to Comment

Section 15.974(3) of the Water Code states that the board may use the WIF "to make loans at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project." The Legislature, in allocating funding through the WIF did not provide for land acquisition costs to be funded using the WIF deferred option for funding. Without express legislative authorization, the board cannot fund land acquisition costs using the deferred option.

One comment related to the apparent exclusion of right-of-way or land acquisition under release of funds in §363.1206(e). The proposed rules do not address when funds for acquisition may be released and other board programs allow for the release of acquisition funds subsequent to approval of an engineering feasibility report and environmental assessment. Proposed §363.1206(e)(2) has therefore been modified to allow for consistency with the board's other funding programs.

Comments

Written, public comment was filed by two commenters requesting that the Board give priority to projects that are connecting to a source that isn't new but that hasn't been used because it was not connected.

Response to Comments

The board interprets the rule to include this type of project as a new source under 31 TAC §363.1208, as long as the applicant is not presently using the source for water supply. For example, a city may have water rights in an existing lake but does not have a delivery line. A project to deliver the water under the rights would be considered a new source.

Comments

One commenter stated that the prioritization criteria in proposed §363.1208 are insufficient to determine an applicant's need for state funding assistance because the criteria are not specific enough to properly differentiate between projects that need to be given priority because other funding options are not available. Specifically, this commenter suggested revising the prioritization criteria in a way that establishes a uniform ranking system in which benchmarks are established that prove level of need for each applicant and take into account alternative funding sources that some applicants may possess.

Response to Comments

The board has reviewed the prioritization criteria established in proposed §363.1208 and has amended §363.1208 to more clearly define the process to be used in prioritizing projects for funding using the WIF. The board has modified proposed §363.1208 to do the following: (1) to clarify that the projects that satisfy the greatest number of enumerated criteria will be prioritized for funding; (2) to clarify that applicants for water plan funding under the Economically Distressed Areas Program for which there are insufficient funds shall receive priority for funding from the WIF; and (3) to clarify that in those cases when eligible projects have identical rankings under §363.1208(b)(1) - (3), priority will be given to the applicant with the lowest median household income for the service area. In addition, and in response to these comments, the Board has deleted proposed §363.1203(b)(2) and §363.1208(b)(4) because they expand project eligibility beyond those recommended in the state water plan.

Comment

One commenter suggested that the new WIF rules proposed in Subchapter L, Chapter 363, should be amended to specify that the WIF cannot be used to reimburse an applicant for money spent from any other source when that money has already been committed by or to the applicant stating that the WIF should be used to provide funds to applicants who have a true need for the funds in order to carry out their projects and not to reimburse applicants for money that they have already spent from other sources available to them.

Response to Comment

The board has not modified the provisions set forth in Subchapter L, Chapter 363. Assessment of need is part of the assessment of every application received by the Board. Funds are disbursed based on whether the costs are related to the project being funded and are deemed eligible through the Board's ongoing review process. The Board has procedures in place to prevent double recovery and other abuse of funds and does not believe that additional safeguards are warranted.

Finally, the board identified a technical correction that needs to be made to proposed §363.1006(a) and §363.1207(a), relating to Prioritization Systems. These two sections refer to six month periods during which prioritization should occur. However, the months specified in §363.1006(a) and §363.1207(a) are not six months apart. The months listed in §363.1006(a) and §363.1207(a) should be January and July for application submittals and February and August for board consideration. The board adopts the revised dates.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.1, §363.2

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joe Reynolds
Attorney
Texas Water Development Board
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For further information, please call: (512) 463-4946

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DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §§363.11 - 363.16, 363.18, 363.19

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments and new section are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

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Joe Reynolds
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Texas Water Development Board
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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.32, §363.33

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements

Texas Water Code §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

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Joe Reynolds
Attorney
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DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §§363.41 - 363.43

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

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Joe Reynolds
Attorney
Texas Water Development Board
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DIVISION 5. CONSTRUCTION PHASE

31 TAC §363.55

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments are adopted under the authority of the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code, §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

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Joe Reynolds
Attorney
Texas Water Development Board
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SUBCHAPTER B. STATE WATER POLLUTION CONTROL REVOLVING FUND

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §§363.201, 363.202, 363.204 - 363.209

Statutory authority: Texas Water Code, §6.101. The repeal of these sections is adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q and Chapter 17, Subchapter L. No other statutes or codes are affected by these repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joe Reynolds
Attorney
Texas Water Development Board
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DIVISION 2. APPLICATIONS FOR ASSISTANCE

31 TAC §§363.221 - 363.226

Statutory authority: Texas Water Code, §6.101. The repeal of these sections is adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q and Chapter 17, Subchapter L. No other statutes or codes are affected by these repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joe Reynolds
Attorney
Texas Water Development Board
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DIVISION 3. CLOSING AND CONSTRUCTION PHASE

31 TAC §363.241, §363.242

Statutory authority: Texas Water Code, §6.101. The repeal of these sections is adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q and Chapter 17, Subchapter L. No other statutes or codes are affected by these repeals.

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Joe Reynolds
Attorney
Texas Water Development Board
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SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS

DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §§363.502 - 363.505, 363.507, 363.512

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments and new section are adopted under the authority of the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code, §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

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Joe Reynolds
Attorney
Texas Water Development Board
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SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §§363.1002 - 363.1004, 363.1006, 363.1007, 363.1014, 363.1017

Statutory authority: Texas Water Code, §6.101 and §15.605. The amendments are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

§363.1006. Prioritization System.

(a) The executive administrator will prioritize all applications not previously considered by the board on February 1 and August 1 of each year. An application must be submitted by January 1 to be prioritized on February 1. An application must be submitted by July 1 to be prioritized on August 1. The executive administrator will provide the prioritization to the board in February and August of each year.

(b) Prior to each board meeting at which applications may be considered, the executive administrator shall:

(1) for each application that the executive administrator has determined is complete, prioritize the applications using the criteria identified in §363.1007 of this title (relating to Prioritization Criteria).

(2) provide to the board a list of all completed applications, the amount of funds requested and the priority of each application received; and

(3) identify to the board, the total amount of funds available in the State Participation Account for new applications.

(c) If there are funds in the State Participation Account to fund all or part of any of the projects for which the executive administrator has received completed applications during the preceding six months, the board will first consider any projects that the legislature has determined shall receive priority for financial assistance from the State Participation Account. If, after considering projects with legislative priority, there are funds available for other eligible projects in the State Participation Account, then the board will consider such other applications received by the executive administrator during the preceding six month period in descending numerical order based on the priority assigned to the application according to §363.1007 of this title. The board will consider the next application on the list only if there are funds available in the account to fund all or, if acceptable to the applicant, a part of the application.

(d) The board shall determine the amount of funds available for water plan projects and shall prioritize and consider those separately from projects that are not water plan projects.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Joe Reynolds
Attorney
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SUBCHAPTER L. WATER INFRASTRUCTURE FUND

31 TAC §§363.1201 - 363.1210

Statutory authority: Texas Water Code, §6.101 and §15.605. The new sections are adopted under the authority of the Texas Water Code §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and implements Texas Water Code §15.977 and §16.342, which authorize the board to publish rules to carry out its duties for these programs in particular.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter Q; Chapter 16, Subchapter C; Chapter 17, Subchapter K; and Chapter 17, Subchapter L.

§363.1201. Scope of Subchapter L.

This subchapter shall govern applications for financial assistance from the Water Infrastructure Fund, established by the Texas Water Code, Chapter 15, Subchapter Q. The program described in this subchapter shall be known as the Water Infrastructure Fund. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this chapter (relating to General Provisions) shall apply to applications for assistance from the Water Infrastructure Fund.

§363.1202. Definitions of Terms.

Words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) "Eligible political subdivision" means:

(A) a municipality;

(B) a county;

(C) a river authority or special law;

(D) a water improvement district;

(E) an irrigation district;

(F) a water control and improvement district; and

(G) a groundwater district with a groundwater management plan certified by the board under Texas Water Code, §36.1072.

(2) Fund--The Water Infrastructure Fund.

(3) Project--Any undertaking or work, including planning and design activities and work to obtain regulatory authority, to conserve, mitigate, convey, and develop water resources of the state, including any undertaking or work done outside the state that the board determines will result in water being available for use in or for the benefit of the state.

§363.1203. Use of Funds.

(a) The board may use the fund for financial assistance as follows:

(1) to make loans to political subdivisions at or below market interest rates for projects; and

(2) to make loans to political subdivisions at or below market interest rates for planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project.

(b) The board may make funding available under subsection (a) of this section only for implementation of projects which are recommended water management strategies in a board-approved regional water plan adopted pursuant to Texas Water Code, §16.053 or in the water plan adopted pursuant to Texas Water Code, §16.051.

§363.1206. Pre-design Funding Option.

(a) This loan application option will provide an eligible applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan for the pre-design, design or building costs associated with funding of a project under §363.1203(b) of this title (relating to Use of Funds). Under this option, a loan may be closed and funds necessary to complete planning and design activities released. If planning requirements have not been satisfied, design and building funds will be held or escrowed and released in the sequence described in this section. Following completion of planning activities and environmental assessment, the executive administrator may require the applicant to make changes in order to proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient shall use the escrowed funds to redeem bonds purchased by the board in inverse order of maturity.

(b) Reservoir projects are not eligible for funding under this option.

(c) The executive administrator may recommend to the board the use of this section if, based on available information, there appear

to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(d) Applications for pre-design funding must include the following information:

(1) for loans including building cost, a preliminary engineering feasibility report which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected water needs and sources; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services;

(3) evidence that an approved water conservation plan will be adopted prior to the release of loan funds;

(4) all information required in §363.12 of this title (relating to General, Legal and Fiscal Information); and

(5) any additional information the executive administrator may request to complete evaluation of the application.

(e) After board commitment and completion of all closing and release prerequisites as specified in §363.42 of this title (relating to Loan Closing) and §363.43 of this title (relating to Release of Funds), funds will be released in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase;

(2) for acquisition and design costs, after receipt of executed contracts for the design phase and upon approval of an engineering feasibility report as specified in §363.13 of this title (relating to Engineering Feasibility Data) and compliance with §363.14 of this title (relating to Environmental Assessment); and

(3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.

(f) Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (d) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns. Subsequently, these projects must have a favorable executive administrator's recommendation which is based upon a full environmental review during planning, as provided under §363.14 of this title.

(g) The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the applicant resulting from environmentally related special mitigative or precautionary measures from an environmental assessment under §363.14 of this title.

§363.1207. Prioritization System.

(a) The executive administrator will prioritize all applications not previously considered by the board on February 1 and August 1 of each year. An application must be submitted by January 1 to be prioritized on February 1. An application must be submitted by July 1 to be prioritized on August 1. The executive administrator will provide the prioritization to the board in February and August of each year.

(b) Prior to each board meeting at which applications may be considered, the executive administrator shall:

(1) for each application that the executive administrator has determined is complete, prioritize the applications by the criteria identified in §363.1208 of this title (relating to Prioritization Criteria).

(2) provide to the board a list of all completed applications, the amount of funds requested and the priority of each application received and

(3) identify to the board, the total amount of funds available in the Water Infrastructure Fund for new applications.

(c) If there are funds in the Water Infrastructure Fund to fund all or part of any of the projects for which the executive administrator has received completed applications during the preceding six months, the board will first consider any projects that the legislature has determined shall receive priority for financial assistance from the Water Infrastructure Fund. If, after considering projects with legislative priority, there are funds available for other eligible projects in the Water Infrastructure Fund, then the board will consider such other applications received by the executive administrator during the preceding six month period in descending order of priority according to §363.1208 of this title. The board will consider the next application on the list only if there are funds available in the account to fund all or, if acceptable to the applicant, a part of the application.

§363.1208. Prioritization Criteria.

(a) Applicants who have applied and were eligible for Economically Distressed Areas Program funding under §363.512 of this title (relating to Projects Related to Implementation of the Water Plan), and where sufficient funds are not available in the program to fund the project, will be given first consideration for funding under this subchapter.

(b) Notwithstanding subsection (a) of this section, applications shall be prioritized based on the number of factors met by the project seeking financial assistance. The following factors shall be considered by the Executive Administrator when ranking the applications:

(1) projects which result in the development of a new, usable supply of water;

(2) projects which have the earliest identified need, as identified in the water plan; and

(3) entities that:

(A) have already demonstrated significant water conservation savings; or

(B) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

(c) If two or more projects receive the same priority ranking, priority will be given to the project having the service area with the lowest median annual household income, weighted by population of each of the areas served, based upon the most current data available from the U.S. Bureau of the Census for all the areas to be served by the project.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706141

Joe Reynolds
Attorney
Texas Water Development Board
Effective date: December 25, 2007
Proposal publication date: October 19, 2007
For further information, please call: (512) 463-4946

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CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §368.4, §368.10

The Texas Water Development Board (board) adopts amendments to 31 TAC §368.4 and §368.10 concerning Grant Applications and Notice and Funding Limitations under the Flood Mitigation Assistance Program. The proposed rulemaking was published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7704). The amendments are adopted without changes to the proposed text and are not republished.

Adopted amendments to these sections are made to provide for greater efficiency and increased responsiveness in the event of disaster and in coordination with the Federal Emergency Management Agency's (FEMA) efforts to maximize the availability of grant funds. These amendments help implement and assist state and local governments in funding cost-effective actions that reduce or eliminate the long-term risk of flood damage to structures. The long term goal is to reduce or eliminate insurance claims through mitigation activities.

The adopted amendment of §368.4(a) deletes the words "As funds become available," eliminating the requirement that FEMA funds be available before the board's executive administrator publishes notice in the *Texas Register* requesting applications for grants. The purpose of this amendment is to allow the executive administrator more flexibility by removing the requirement that notice only be published when funds are available. Funds could, therefore, be made available to existing applicants as they become available to the board.

The adopted amendment of §368.10(c) adds the words "the executive administrator may seek and" to clarify that the board has delegated authority to the executive administrator to act immediately to request a waiver of funding limits from FEMA in order to immediately respond in the event a disaster is declared by the President of the United States.

No comments where received during the posted comment period.

The amendments are adopted under the authority of Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and Chapter 742.003(b), Texas Government Code, which governs the board's responsibilities in administering the Flood Mitigation Assistance Program for FEMA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706147

Robert Flores
Attorney
Texas Water Development Board
Effective date: December 25, 2007
Proposal publication date: October 19, 2007
For further information, please call: (512) 463-4946

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.12, §375.15

The Texas Water Development Board (board) adopts amendments to 31 TAC §375.12 and §375.15 relating to extended financing terms under the Clean Water State Revolving Fund program. The proposed rulemaking was published in the September 21, 2007, issue of the *Texas Register* (32 TexReg 6513). The amendments to 31 TAC §375.12 are adopted with changes to the proposed text and will be republished. The amendments to 31 TAC §375.15 are adopted without changes and will not be republished. The board adopts these amendments to 31 TAC §375.12 and §375.15 to implement a March 17, 2006 Policy Statement of the United States Environmental Protection Agency (EPA) on extended financing terms under the Clean Water Act State Revolving Fund program. Prior to this proposed adoption, 31 TAC §375.12 limited the term of loans made under the Clean Water State Revolving Fund (CWSRF) to 20 years. Under the Federal Water Pollution Control Act, as amended, and the EPA's March, 2006 guidance, the board may use the CWSRF to purchase municipal debt obligations with terms that exceed 20 years (extended financing terms). Subsequent to the EPA Policy Statement, EPA issued additional memoranda identifying guidelines pursuant to which the board may purchase municipal obligations with terms that exceed 20 years.

The board adopts amendments to 31 TAC §375.12 and §375.15 to provide extended financing terms because of CWSRF program customer requests to provide terms that more closely match the life of the assets being financed by the CWSRF. Additionally, the board is adopting these amendments to provide more flexibility in financing for Texas communities who use the CWSRF program for their wastewater infrastructure needs.

The board withdraws its proposed amendments to §375.12(a) because this provision mirrors §15.604, Water Code, and is, therefore, unnecessary.

The board adopts §375.12(c)(1) - (4) as proposed with certain minor, organizational changes. The previous consolidation of the requirements applicable to loans and to the purchase of municipal debt obligations created some confusion about the difference between these two transactions. Therefore, the board adopts a modified version of §375.12(c) to clarify the distinction between direct loans and the purchase of municipal debt. The board has now separated the two different transactions by adopting new §375.12(d), which is applicable solely to the purchase of municipal debt. Subsection (d) allows for extended financing terms. As adopted, §375.12(c) relates only to loans being made by the board pursuant to §375.12(a)(1).

In summary, the conditions set forth in §375.12(c)(5), as proposed in the September 21, 2007 *Texas Register*, are moved into

a new subsection (d) and relate specifically to the board's purchase of municipal debt under §375.12(a)(2). The board adopts new §375.12(d) to allow for extended financing terms when the board is purchasing new municipal debt obligations, as authorized by the Federal Water Pollution Control Act, the EPA's regulations and recent guidance, and §15.604, Water Code. The board defines an "extended financing term" as more than 20 years but not more than 30 years based on the EPA's March 17, 2006 guidance document.

Subsection (d) of §375.12 provides three conditions under which the board may provide extended financing terms. First, the board is limiting the term to no longer than the earlier of either 30 years or the useful life of the asset financed by the proposed assistance. The board proposes this condition to allow longer terms while maintaining the integrity of the CWSRF consistent with EPA guidance. Second, the board is limiting the average bond life for extended term financing to no more than 20 years in order to manage CWSRF program capacity and the subsidy levels offered in the program. Third, the board is limiting the amount of new municipal debt obligations purchased by the CWSRF to the amount estimated, pursuant to proposed §375.15(a), to be available for such financings while maintaining the total amount of funds historically available through the CWSRF.

The board is adopting the proposed amendments to §375.15(a) without modification.

Statutory authority: Water Code, §6.101 and §15.605.

Cross reference to statute: Water Code, Chapter 15, Subchapter J.

§375.12. Types of Assistance.

(a) Use of fund. The fund may be used for the following purposes:

(1) to make loans on the condition that:

(A) such loans are made at or below market interest rates, including interest free loans at terms not to exceed 20 years;

(B) annual principal and interest payments will commence not later than one year after completion on any project and all loans will be fully amortized not later than 20 years after project completion; and

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;

(2) to buy or refinance the bonds of eligible applicants within the state at or below market rates, when such debt obligations were incurred after March 7, 1985;

(3) for the reasonable costs of administering the fund and conducting activities under the Act, Title VI;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of sale of such bonds will be deposited in the fund;

(5) to earn interest on fund accounts; and

(6) to guarantee or purchase insurance for local debt obligations.

(b) Refinancing of debt. Applications for which refinancing is sought must include provisions for purchase of insurance for the local debt obligation.

(c) Conditions of Financial Assistance. Financial assistance pursuant to §375.12(a)(1) may be provided on the condition that:

(1) the financial assistance is made at or below market interest rates, including 0% interest;

(2) the recipient of the financial assistance will establish a dedicated source of revenue for repayment of the financial assistance;

(3) interest payments will commence no later than 1 year after the date of closing and annual principal payments will commence either one year after completion of project construction or 5 years after the date of closing, whichever is earlier; and

(4) the term of the financial assistance shall not exceed 20 years, the average bond life shall not exceed 16 years provided, and the financial assistance will be fully amortized not later than 20 years after the completion of project construction.

(d) Notwithstanding subsection (c), above, the board may buy the municipal debt obligations of eligible applicants with an extended term (defined as a term of more than 20 years but not more than 30 years) in accordance with §375.12(a)(2) on the condition that:

(1) the financial assistance is made at or below market interest rates, including 0% interest;

(2) the recipient of the financial assistance will establish a dedicated source of revenue for repayment of the financial assistance;

(3) interest payments will commence no later than 1 year after the date of closing and annual principal payments will commence either one year after completion of project construction or 5 years after the date of closing, whichever is earlier;

(4) the financial assistance is fully amortized not later than 30 years after the completion of project construction and the term of the municipal bonds are no longer than either 30 years or the design life of the project for which the assistance is provided, whichever is earlier;

(5) the average bond life shall not exceed 20 years for either a level or unlevel debt service schedule; and

(6) the assistance will not exceed the amount identified in the applicable intended use plan as available for financial assistance with an extended term.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706148
Joe Reynolds
Attorney
Texas Water Development Board
Effective date: December 25, 2007
Proposal publication date: September 21, 2007
For further information, please call: (512) 463-4946

CHAPTER 382. WATER INFRASTRUCTURE FUND

The Texas Water Development Board (the board) adopts the repeal of 31 Texas Administrative Code (TAC) §§382.1 - 382.6, 382.21 - 382.26, and 382.41 - 382.43 relating to the Water In-

frastructure Fund (WIF). The repeal is adopted without changes to the proposed text as published in the October 19, 2007, issue of the *Texas Register* (32 TexReg 7405) and will not be republished. The adopted repeal removes §§382.1 - 382.6, 382.21 - 382.26, and 382.41 - 382.43, which established procedures relating to applications for financial assistance from the WIF. These repealed sections are being superseded by proposed new WIF rules at 31 TAC Chapter 363, Subchapter L, published separately. This action will consolidate the rules relating to the board's state-based funding programs.

The public comment period on the proposal began October 19, 2007, and ended November 19, 2007. No public comments were received.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §§382.1 - 382.6

This repeal is adopted pursuant to §6.101, Water Code, which authorizes the board to adopt rules necessary to carry out the powers and duties of the board and to §15.605, Water Code, which requires the board to adopt rules to administer the fund.

Statutory authority: Texas Water Code §6.101. The repeal of these sections is adopted under the authority of the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board. No other statute or codes are affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706143
Joe Reynolds
Attorney
Texas Water Development Board
Effective date: December 25, 2007
Proposal publication date: October 19, 2007
For further information, please call: (512) 463-4946

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SUBCHAPTER B. APPLICATION PROCEDURES

31 TAC §§382.21 - 382.26

Statutory authority: Texas Water Code, §6.101. The repeal of these sections is adopted under the authority of the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board. No other statute or codes are affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706144
Joe Reynolds
Attorney
Texas Water Development Board
Effective date: December 25, 2007
Proposal publication date: October 19, 2007
For further information, please call: (512) 463-4946

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SUBCHAPTER C. CLOSING AND RELEASE OF FUNDS

31 TAC §§382.41 - 382.43

Statutory authority: Texas Water Code, §6.101. The repeal of these sections is adopted under the authority of the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out the powers and duties of the board. No other statute or codes are affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2007.

TRD-200706145
Joe Reynolds
Attorney
Texas Water Development Board
Effective date: December 25, 2007
Proposal publication date: October 19, 2007
For further information, please call: (512) 463-4946

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.10

The Texas County and District Retirement System adopts new §103.10 concerning the form and manner of payment of a survivor annuity. The rule is adopted with changes to the proposed text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7858). The adopted rule is intended to comply with HB 1587, as enacted into law by the 80th Legislature, which provides that the survivor annuity benefit be the actuarial equivalent under the system to an annuity based on the accrued benefit of the eligible deceased member. The legislation also requires the board of trustees to authorize by rule the form and manner of payment of the survivor annuity. Previous law limited the survivor annuity benefit to that contingent annuity that would be payable assuming the member had retired and immediately died. This prior law permitted vast disparity in the value of a survivor annuity payable to identically situated beneficiaries of deceased members who were of different ages. Additionally, benefits available to a deceased member's family were significantly less than those benefits available to a retiree and the retiree's

family. With the legislative change, beneficiaries will receive the actuarial value of the benefit accrued by the deceased member, resulting in greater parity between the benefits available to the family of a retiree and the family of a deceased member.

On its own motion the system made changes to clarify that the term 'by law' refers specifically to the TCDRS Act, and that the election by a trust having a sole beneficiary to be treated as a named beneficiary is an election with the system, and effective only if allowable under the rules and regulations of the Internal Revenue Service.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System has determined that these changes are non-substantive changes, but are clarifications to the proposed rule as published. The rule, as adopted with changes, is published.

No comments were received regarding the adoption of this proposed rule.

The new rule is adopted under the Government Code, §844.407, which mandates the board of trustees to authorize the form and manner for paying a survivor annuity.

The Government Code, §844.407 is affected by this adopted rule.

§103.10. Survivor Annuity.

(a) The beneficiary of a deceased member who had accumulated at least four years of credited service in the system is eligible to apply for and receive a survivor annuity as described in this section.

(b) The annuity payable under this section to an individual beneficiary shall be the actuarial equivalent, as defined in §841.001(1) of the Act, of the allocated shares of the member's individual account balance and total service credit standing to the credit of the member computed as of the last day of the month preceding the member's death.

(c) An individual designated as beneficiary by the member, or an individual designated as beneficiary under the Act, may elect an annuity to be paid in the form of a life annuity for the beneficiary's life but actuarially reduced to provide a guarantee that the total of all payments will equal or exceed:

(1) the beneficiary's allocated share of the decedent's individual account balance; or

(2) the equivalent of 120 monthly payments; or

(3) the equivalent of 180 monthly payments.

(d) In lieu of an annuity, the beneficiary may elect a refund of the beneficiary's allocated share of the deceased member's individual account.

(e) The annuity shall be calculated using the beneficiary's age on the last day of the month preceding the member's death and computed on the beneficiary's allocated shares of the deceased member's individual account balance and total service credit standing to the credit of the member as of the last day of the month preceding the member's death.

(f) An individual designated as beneficiary by the member, or an individual designated as beneficiary under the Act, may not renounce, repudiate, or disclaim the benefit provided under this section, except that in lieu of an annuity, an individual beneficiary may apply for a refund of that beneficiary's share of the deceased member's individual account balance.

(g) In the event that multiple persons are designated as beneficiaries by the member, the deceased member's individual account balance and total service credit shall be prorated among all beneficiaries, and each individual beneficiary may select any payment form described in subsection (c) of this section computed on the shares allocated to that individual. A beneficiary designated by the member or designated under the Act that is not an individual will receive a single payment as described in subsection (h) of this section.

(h) A designated beneficiary that is not an individual shall receive a single payment equal to the allocated shares of the member's individual account balance and total service credit standing to the credit of the member as of the last day of the month preceding the member's death.

(i) A trustee of a trust having a single primary beneficiary may elect with the system that the beneficiary of the trust be considered as a named beneficiary for purposes of selecting an annuity but such election shall be effective only if the beneficiary of the trust would be considered a named beneficiary for purposes of the rules and regulations of the Internal Revenue Code relating to required minimum distributions.

(j) An individual beneficiary who dies before filing an application for benefits or who fails to file an application within 90 days following notice from the system that a benefit is payable shall be deemed to have selected the life annuity with the guarantee that the total of all payments will equal or exceed the share of the deceased member's individual account balance allocable to the beneficiary.

(k) No interest shall accrue on any benefit payable under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706169
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 637-3230

CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.2

The Texas County and District Retirement System adopts new §105.2 concerning the recognition and combining of credited service accumulated with multiple subdivisions for purposes of determining retirement eligibility with a particular subdivision. The rule is adopted with a change to the proposed text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7859). The rule is intended to comply with HB 1587, as enacted into law by the 80th Legislature, which mandated the board of trustees to establish rules for this purpose. All credited service of the member accumulated in this system may be combined for purposes of meeting the specific eligibility requirements for retirement or a survivor annuity with respect to a particular subdivision. However, to be eligible to retire with a particular subdivision, the member must satisfy the specific vesting requirement of that subdivision. Other service credited under the proportionate retirement program may be recognized

and combined only for determining eligibility for service retirement. Proportionate program service may not be combined for purposes of determining eligibility for disability retirement or a survivor annuity. This rule conforms to the evolving policy that the several subdivisions participating in the system operate independently, one from the others, except for the universal recognition of all service credited in the system. Additionally, this rule eliminates much of the disparate treatment between members who have proportionate retirement program service and members who have service with multiple subdivisions.

The narrative in subsection (c) incorrectly referred to subsection (a). The correct reference is to subsection (b). On its own motion the system made the change to correct the narrative.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System has determined that this change is non-substantive changes, but is a correction to the proposed rule as published. The rule, as adopted with the change, is published.

No comments were received regarding the adoption of the proposed rule.

The new rule is adopted under the Government Code, §844.1021, which requires the board of trustees to establish rules for recognizing and combining credited service for purposes of meeting retirement eligibility provisions of the respective subdivisions.

The Government Code, §844.1021 is affected by this adopted rule.

§105.2. Combining Credited Service with Multiple Subdivisions.

(a) A member must satisfy the retirement eligibility requirement of the particular subdivision with which the member is applying for retirement.

(b) All of a member's credited service in this system, as defined in §841.001(7) of the Act, will be combined and recognized for purposes of determining eligibility for service and disability retirements with respect to each subdivision, and eligibility for the survivor annuity.

(c) All credited service described in subsection (b) of this section will be combined with all other credited service of the member recognized under the proportionate retirement program for purposes of determining eligibility for service retirement with respect to each subdivision.

(d) Credited service of the member recognized under the proportionate retirement program may not be combined with the member's credited service in this system as defined in §841.001(7) of the Act for purposes of determining eligibility for any disability retirement or survivor annuity.

(e) When combining service for purposes of determining eligibility, only one month of credited service may be recognized for any particular calendar month.

(f) A member eligible for disability retirement under §844.302(a) of the Act, is eligible for disability retirement from all subdivisions with which the member has service credit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2007.

TRD-200706170
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Effective date: January 1, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 637-3230

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Facilities Commission

Title 1, Part 5

In accordance with Texas Government Code, §2001.039, the Texas Facilities Commission (the Commission) proposes to review its administrative rules contained in Texas Administrative Code, Title 1, Part 5, Chapter 111, entitled Executive Administration Division; Chapter 115, entitled Facilities Leasing Program; and Chapter 122, entitled Facilities Space Planning.

Chapter 111 relates to executive administration of the Commission, including organization, protesting agency solicitations and resolving disputes, establishing agency ethical standards, filing complaints, petitioning the Commission for adoption of rules, negotiating and mediating certain contract disputes, and establishing an agency sick leave pool.

Chapter 115 relates to leasing of property by and for the State of Texas and addresses prerequisites for leasing space, leasing space for health and human services agencies, delegation of authority, leasing services, the use of private firms to obtain space, and tenant agency responsibility and reporting.

Chapter 122 relates to state agency requests for allocation, relinquishment, or modification of space in facilities under the Commission's control. In addition, this chapter establishes General Space Allocation Guidelines applicable to certain facilities owned or leased by the State of Texas and further provides for state agency requests for waivers from such Guidelines and appeals from Commission determinations concerning space allocation.

As required by Texas Government Code, §2001.039, the Commission conducts this review to determine whether the statutory authority and the business reasons for the original adoption of Chapters 111, 115, and 122 continue to exist.

Comments on the proposals may be submitted to Kay Molina, General Counsel, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via electronic mail to *rulescomments@tfc.state.tx.us* and should state Proposed Rule Reviews in the subject line of e-mailed comments. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

TRD-200706160
Kay Molina
Legal Counsel
Texas Facilities Commission
Filed: December 6, 2007

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Texas Medical Board

Title 22, Part 9

The Texas Medical Board proposes to review Chapter 167, §§167.1 - 167.8, concerning Reinstatement and Reissuance, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§167.1, 167.3 and 167.8; and the repeal and replacement of §167.4 and §167.5.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200706190
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 7, 2007

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The Texas Medical Board proposes to review Chapter 170, §§170.1 - 170.3, concerning Pain Management, pursuant to the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200706191
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 7, 2007

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The Texas Medical Board proposes to review Chapter 177, §§177.1 - 177.13, concerning Certification of Non-Profit Health Organizations, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§177.1, 177.3, 177.4, 177.6, 177.9 and 177.13.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200706192
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 7, 2007

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Texas Youth Commission

Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission files this notice of intent to review and consider for readoption, 37 TAC Chapter 97 (Security and Control) and Chapter 99 (General Provisions).

The commission will determine whether the reasons for adopting the rules under review continue to exist. Any amendments to or repeals of rules proposed as a result of this rule review will be published in future issues of the *Texas Register*, in the Proposed Rules section.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to DeAnna Lloyd, Manager of Policy, Grants, and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or by email to deanna.lloyd@tyc.state.tx.us.

TRD-200706222
Steve Foster
General Counsel
Texas Youth Commission
Filed: December 10, 2007

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of the Texas Administrative Code, Title 4, Part 1, Chapter 18, concerning Organic Standards and Certification, pursuant to the Texas Government Code, §2001.039, and readopts all sections in Chapter 18, Subchapters A, B, D and E and all sections in Subchapters C and F, with amendments proposed to those subchapters in the department's notice of intent to review. The notice of intent to review was published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7935).

No comments were received on the proposal.

Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist. As part of the review process, the department proposed amendments to Chapter 18, Subchapter C, §18.236, concerning Organic Production and Handling Requirements; Subchapter F, §18.600, concerning the List of Allowed and Prohibited Substances; and §18.702, concerning fees; and the repeal of Subchapter F, §§18.601 - 18.606, concerning the List of Allowed and Prohibited Substances, and §18.701, concerning the Organic Certification Advisory Committee. The proposed amendments were also published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7793). No comments were received on the proposal.

The assessment of Texas Administrative Code, Title 4, Part 1, Chapter 18, Subchapters A - F, by the department at this time, indicates that with the addition of the adopted amendments to §§18.236, 18.600 and 18.702 and the repeal of §§18.601 - 18.606 and §18.701, the reason for readopting without changes all sections in Chapter 18, Subchapters A - F continues to exist.

TRD-200706218
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 7, 2007

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Pursuant to the notice of proposed rule review published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 5035), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on August 10, 2007, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 103, Agency Administration.

The Department considered, among other things, whether the reasons for not adopting this rule continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for not adopting the remaining sections continue to exist and those sections are retained in their present form. The rules in this Chapter will be presented at a later date for repeal. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 103. The completion of the review of this chapter concludes the rule review process.

TRD-200706270
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 10, 2007

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the August 31, 2007 issue of the *Texas Register* (32 TexReg 5711), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on August 31, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 136, Benefits--Vocational Rehabilitation.

The Department considered, among other things, whether the reasons for adoption of this rule continue to exist. The Department received no written comments regarding the review of its rule.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal

procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 136. The completion of the review of this chapter concludes the rule review process.

TRD-200706269
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 10, 2007

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7699), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on October 26, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 143, Dispute Resolution Review by the Appeals Panel.

The Department considered, among other things, whether the reasons for adoption of this rule continue to exist. The Department received no written comments regarding the review of its rule.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 143. The completion of the review of this chapter concludes the rule review process.

TRD-200706271
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 10, 2007

♦ ♦ ♦

Pursuant to the notice of proposed rule review published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7699), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on October 26, 2007, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 169, Workers' Health and Safety--Drug-Free Workplace Program.

The Department considered, among other things, whether the reasons for not adopting this rule continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for not adopting the remaining sections continue to exist and those sections are retained in their present form. The rules in this Chapter will be presented at a later date for repeal. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 169. The completion of the review of this chapter concludes the rule review process.

TRD-200706272
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 10, 2007

♦ ♦ ♦

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) has reviewed 16 TAC Chapter 401 relating to Administration of State Lottery Act, in accordance with the requirements of Texas Government Code, §2001.039, and readopts the rules in Chapter 401. The Commission has determined that the reasons continue to exist for adopting the rules in Chapter 401, Subchapters A through G.

Subchapter A relates to Procurement provisions. Subchapter B relates to the Licensing of Sales Agents. Subchapter C relates to Practice and Procedure. Subchapter D relates to Lottery Game Rules, Subchapter E relates to Retailer Rules. Subchapter F relates to ADA Requirements. Subchapter G relates to Lottery Security.

This review and readoption has been conducted in accordance with Texas Government Code, §2001.039. The Commission received no comments on the proposed review, which was published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7086).

This concludes the review of 16 TAC Chapter 401.

TRD-200706154
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 6, 2007

♦ ♦ ♦

The Texas Lottery Commission (Commission) has reviewed Title 16, Part 9, Chapter 402, relating to Charitable Bingo Administrative Rules, in accordance with the requirements of Texas Government Code §2001.039, and readopts the rules in Chapter 402, other than §402.406, relating to Exemptions from Licensing Requirements, and §402.705, relating to Compliance Review. The Commission has determined that the reasons continue to exist for adopting the rules in Chapter 402, other than §402.406 and §402.705. The Commission will propose the repeal of §402.406 and §402.705 in a separate rulemaking.

Subchapter A relates to Administration. Subchapter B relates to Conduct of Bingo. Subchapter C relates to Bingo Games and Equipment. Subchapter D relates to Licensing Requirements. Subchapter E relates to Books and Records. Subchapter F relates to Payment of Taxes, Prize Fees and Bonds. Subchapter G relates to Compliance and Enforcement.

This review and readoption has been conducted in accordance with Texas Government Code, §2001.039. The Commission received one comment on the proposed review, which was published in the October 5, 2007, issue of the *Texas Register* (32 TexReg 7086). The commenter suggested that §402.300(d)(13)(D) - (G) relating to the design of pull-tab bingo tickets would be more appropriately located under subsection (b) concerning the approval of pull-tab bingo tickets.

This concludes the review of 16 TAC Chapter 402.

TRD-200706151
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 6, 2007

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Texas Medical Board

Title 22, Part 9

The Texas Medical Board adopts the review of Chapter 164, §§164.1 - 164.5, concerning Physician Advertising, pursuant to the Texas Government Code, §2001.039.

The proposed review was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6383).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 164, Physician Advertising.

TRD-200706230
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 10, 2007

♦ ♦ ♦

The Texas Medical Board adopts the review of Chapter 173, §§173.1 - 173.5 and 173.7, concerning Physician Profiles, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§173.1, 173.2 and 173.5.

The proposed review was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6383).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 173, Physician Profiles.

TRD-200706231
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 10, 2007

♦ ♦ ♦

The Texas Medical Board adopts the review of Chapter 196, §§196.1 - 196.5, concerning Voluntary Relinquishment or Surrender of a Medical License, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §196.2 and §196.3.

The proposed review was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6383).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 196, Voluntary Relinquishment or Surrender of a Medical License.

TRD-200706232
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 10, 2007

♦ ♦ ♦

The Texas Medical Board adopts the review of Chapter 198, §§198.1 - 198.6, concerning Unlicensed Practice, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §198.2 and §198.3.

The proposed review was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6383).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 198, Unlicensed Practice.

TRD-200706233
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 10, 2007

♦ ♦ ♦

The Texas Medical Board adopts the review of Chapter 199, §§199.1 - 199.5, concerning Public Information, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §199.1 and §§199.3 - 199.5.

The proposed review was published in the September 14, 2007, issue of the *Texas Register* (32 TexReg 6383).

No comments were received regarding adoption of the review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 199, Public Information.

TRD-200706234
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: December 10, 2007

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §177.13(b)

NOTICE CONCERNING COMPLAINTS REGARDING NON-PROFIT HEALTH ORGANIZATIONS

The provision of medical care at this location is through a non-profit health organization which has been approved and certified by the Texas Medical Board. Complaints about the delivery of medical care through this organization and/or its physicians, as well as other licensees and registrants of the Texas Medical Board, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address:

Texas Medical Board
Attention: Investigations
333 Guadalupe, Tower 3, Suite 610
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number:

1-800-201-9353

For more information, please visit our web site at www.tmb.state.tx.us.

Figure: 22 TAC §177.13(c)

AVISO SOBRE QUEJAS DE ORGANIZACIONES MÉDICAS SIN FINES DE LUCRO

La atención médica en esta instalación se brinda a través de una organización médica sin fines de lucro, aprobada y certificada por la Junta de Médicos del Estado de Texas. Las quejas sobre la atención médica prestada por esta organización y/o sus médicos, así como por otros profesionales acreditados e inscritos en la Junta de Médicos del Estado de Texas, incluyendo asistentes de médicos, practicantes de acupuntura, y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas:

Texas Medical Board
Attention: Investigations
333 Guadalupe, Tower 3, Suite 610
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

Si necesita ayuda para presentar una queja, llame al:

1-800-201-9353

Para más información, visite nuestro sitio web en www.tmb.state.tx.us.

Figure: 25 TAC §289.202(c)(39)

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30*
Whole Body	1.00**

* 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

** For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Figure: 25 TAC §289.202(hhh)(2)

Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16.0
Americium-241/Be	60	1,600	0.6	16.0
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1
Curium-244	50	1,400	0.5	14.0
Cesium-137	100	2,700	1.0	27.0
Gadolinium-153	1,000	27,000	10.0	270.0
Iridium-192	80	2,200	0.8	22.0
Plutonium-238	60	1,600	0.6	16.0
Plutonium-239/Be	60	1,600	0.6	16.0
Polonium-210	60	1,600	0.6	16.0
Promethium-147	40,000	1,100,000	400.0	11,000.0
Radium-226	40	1,100	0.4	11.0
Selenium-75	200	5,400	2.0	54.0
Strontium-90	1,000	27,000	10.0	270.0
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200.0	5,400.0
Ytterbium-169	300	8,100	3.0	81.0

Figure: 25 TAC §289.257(i)(5)(E)(i)

$$CSI = 10\left[\frac{grams^{235}U}{X} + \frac{grams^{233}U}{Y} + \frac{gramsPu}{Z}\right]$$

Figure: 25 TAC §289.257(i)(5)(E)(iii)

Table 257-1
Mass Limits for General License Packages Containing Mixed Quantities of Fissile Material or Uranium-235 of Unknown Enrichment per §289.257(i)(5)(E)

Fissile Material	Fissile material mass mixed with moderating substances having an average hydrogen density less than or equal to H_2O. (grams)	Fissile material mass mixed with moderating substances having an average hydrogen density greater than H_2O [a]. (grams)
^{235}U (X).....	60	38
^{233}U (Y).....	43	27
^{239}PU or ^{241}PU (Z).....	37	24

[a]When mixtures of moderating substances are present, the lower mass limits shall be used if more than 15% of the moderating substance has an average hydrogen density greater than H_2O.

Table 257-2
Mass Limits for General License Packages Containing Uranium-235 of Known Enrichment per §289.257(i)(5)(E)

Uranium enrichment in weight percent of ^{235}U not exceeding	Fissile material mass of ^{235}U (X). (grams)
24.....	60
20.....	63
15.....	67
11.....	72
10.....	76
9.5.....	78
9.....	81
8.5.....	82
8.....	85
7.5.....	88
7.....	90
6.5.....	93
6.....	97
5.5.....	102
5.....	108
4.5.....	114
4.....	120
3.5.....	132
3.....	150
2.5.....	180
2.....	246
1.5.....	408
1.35.....	480
1.....	1,020
0.92.....	1,800

Figure: 25 TAC §289.257(i)(6)(E)(i)

$$CSI = 10\left[\frac{grams^{239}Pu + grams^{241}Pu}{24}\right]; \text{ and}$$

Figure: 25 TAC §289.257(ff)(4)(A)

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

where B(i) is the activity of radionuclide I, and $A_1(i)$ is the A_1 value for radionuclide I.

Figure: 25 TAC §289.257(ff)(4)(B)

$$\sum_i \frac{B(i)}{A_2(i)} \leq 1$$

where B(i) is the activity of radionuclide I and $A_2(i)$ is the A_2 value for radionuclide I.

Figure: 25 TAC §289.257(ff)(4)(C)

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where f(i) is the fraction of activity of nuclide I in the mixture and $A_1(i)$ is the appropriate A_1 value for nuclide I.

Figure: 25 TAC §289.257(ff)(4)(D)

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity of nuclide I in the mixture and $A_2(i)$ is the appropriate A_2 value for nuclide I.

Figure: 25 TAC §289.257(ff)(4)(E)

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum \frac{f(i)}{[A](i)}}$$

where f(i) is the fraction of activity concentration of radionuclide I in the mixture, and [A] is the activity concentration for exempt material containing radionuclide I.

Figure: 25 TAC §289.257(ff)(4)(F)

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum \frac{f(i)}{A(i)}}$$

where f(i) is the fraction of activity of radionuclide I in the mixture, and A is the activity limit for exempt consignments for radionuclide I.

Figure: 25 TAC §289.257(ff)(6)

Table 257-3

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225 (a)	Actinium (89)	$8.0X10^{-1}$	$2.2X10^{1}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.1X10^{3}$	$5.8X10^{4}$
Ac-227 (a)		$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-5}$	$2.4X10^{-3}$	2.7	$7.2X10^{1}$
Ac-228		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$8.4X10^{4}$	$2.2X10^{6}$
Ag-105	Silver (47)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.1X10^{3}$	$3.0X10^{4}$
Ag-108m (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.7X10^{-1}$	$2.6X10^{1}$
Ag-110m (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.8X10^{2}$	$4.7X10^{3}$
Ag-111		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Al-26	Aluminum (13)	$1.0X10^{-1}$	2.7	$1.0X10^{-1}$	2.7	$7.0X10^{-4}$	$1.9X10^{-2}$
Am-241	Americium (95)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.3X10^{-1}$	3.4
Am-242m (a)		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.6X10^{-1}$	$1.0X10^{1}$
Am-243 (a)		5.0	$1.4X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$7.4X10^{-3}$	$2.0X10^{-1}$
Ar-37	Argon (18)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.7X10^{3}$	$9.9X10^{4}$
Ar-39		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	1.3	$3.4X10^{1}$
Ar-41		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.5X10^{6}$	$4.2X10^{7}$
As-72	Arsenic (33)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$6.2X10^{4}$	$1.7X10^{6}$
As-73		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$8.2X10^{2}$	$2.2X10^{4}$
As-74		1.0	$2.7X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$3.7X10^{3}$	$9.9X10^{4}$
As-76		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$5.8X10^{4}$	$1.6X10^{6}$
As-77		$2.0X10^{1}$	$5.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.9X10^{4}$	$1.0X10^{6}$
At-211 (a)	Astatine (85)	$2.0X10^{1}$	$5.4X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$7.6X10^{4}$	$2.1X10^{6}$
Au-193	Gold (79)	7.0	$1.9X10^{2}$	2.0	$5.4X10^{1}$	$3.4X10^{4}$	$9.2X10^{5}$
Au-194		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.5X10^{4}$	$4.1X10^{5}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Au-195		$1.0X10^{1}$	$2.7X10^{2}$	6.0	$1.6X10^{2}$	$1.4X10^{2}$	$3.7X10^{3}$
Au-198		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.0X10^{3}$	$2.4X10^{5}$
Au-199		$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$7.7X10^{3}$	$2.1X10^{5}$
Ba-131 (a)	Barium (56)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.1X10^{3}$	$8.4X10^{4}$
Ba-133		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	9.4	$2.6X10^{2}$
Ba-133m		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.2X10^{4}$	$6.1X10^{5}$
Ba-140 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{-1}$	8.1	$2.7X10^{3}$	$7.3X10^{4}$
Be-7	Beryllium (4)	$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$1.3X10^{4}$	$3.5X10^{5}$
Be-10		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-1}$	$1.6X10^{1}$	$8.3X10^{-4}$	$2.2X10^{-2}$
Bi-205	Bismuth (83)	$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.5X10^{3}$	$4.2X10^{4}$
Bi-206		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$3.8X10^{3}$	$1.0X10^{5}$
Bi-207		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	1.9	$5.2X10^{1}$
Bi-210		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.6X10^{3}$	$1.2X10^{5}$
Bi-210m (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.1X10^{-5}$	$5.7X10^{-4}$
Bi-212 (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.4X10^{5}$	$1.5X10^{7}$
Bk-247	Berkelium (97)	8.0	$2.2X10^{2}$	$8.0X10^{-4}$	$2.2X10^{-2}$	$3.8X10^{-2}$	1.0
Bk-249 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{-1}$	8.1	$6.1X10^{1}$	$1.6X10^{3}$
Br-76	Bromine (35)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$9.4X10^{4}$	$2.5X10^{6}$
Br-77		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$2.6X10^{4}$	$7.1X10^{5}$
Br-82		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{4}$	$1.1X10^{6}$
C-11	Carbon (6)	1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.1X10^{7}$	$8.4X10^{8}$
C-14		$4.0X10^{1}$	$1.1X10^{3}$	3.0	$8.1X10^{1}$	$1.6X10^{-1}$	4.5
Ca-41	Calcium (20)	Unlimited	Unlimited	Unlimited	Unlimited	$3.1X10^{-3}$	$8.5X10^{-2}$
Ca-45		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$6.6X10^{2}$	$1.8X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ca-47 (a)		3.0	$8.1X10^{1}$	$3.0X10^{-1}$	8.1	$2.3X10^{4}$	$6.1X10^{5}$
Cd-109	Cadmium (48)	$3.0X10^{1}$	$8.1X10^{2}$	2.0	$5.4X10^{1}$	$9.6X10^{1}$	$2.6X10^{3}$
Cd-113m		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	8.3	$2.2X10^{2}$
Cd-115 (a)		3.0	$8.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.9X10^{4}$	$5.1X10^{5}$
Cd-115m		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$9.4X10^{2}$	$2.5X10^{4}$
Ce-139	Cerium (58)	7.0	$1.9X10^{2}$	2.0	$5.4X10^{1}$	$2.5X10^{2}$	$6.8X10^{3}$
Ce-141		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.1X10^{3}$	$2.8X10^{4}$
Ce-143		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{4}$	$6.6X10^{5}$
Ce-144 (a)		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.2X10^{2}$	$3.2X10^{3}$
Cf-248	Californium (98)	$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$5.8X10^{1}$	$1.6X10^{3}$
Cf-249		3.0	$8.1X10^{1}$	$8.0X10^{-4}$	$2.2X10^{-2}$	$1.5X10^{-1}$	4.1
Cf-250		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	4.0	$1.1X10^{2}$
Cf-251		7.0	$1.9X10^{2}$	$7.0X10^{-4}$	$1.9X10^{-2}$	$5.9X10^{-2}$	1.6
Cf-252 (h)		$5.0X10^{-2}$	1.4	$3.0X10^{-3}$	$8.1X10^{-2}$	$2.0X10^{1}$	$5.4X10^{2}$
Cf-253 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{-2}$	1.1	$1.1X10^{3}$	$2.9X10^{4}$
Cf-254		$1.0X10^{-3}$	$2.7X10^{-2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.1X10^{2}$	$8.5X10^{3}$
Cl-36	Chlorine (17)	$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{-3}$	$3.3X10^{-2}$
Cl-38		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$4.9X10^{6}$	$1.3X10^{8}$
Cm-240	Curium (96)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$7.5X10^{2}$	$2.0X10^{4}$
Cm-241		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$6.1X10^{2}$	$1.7X10^{4}$
Cm-242		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-2}$	$2.7X10^{-1}$	$1.2X10^{2}$	$3.3X10^{3}$
Cm-243		9.0	$2.4X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.9X10^{-3}$	$5.2X10^{1}$
Cm-244		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	3.0	$8.1X10^{1}$
Cm-245		9.0	$2.4X10^{2}$	$9.0X10^{-4}$	$2.4X10^{-2}$	$6.4X10^{-3}$	$1.7X10^{-1}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Cm-246		9.0	$2.4X10^{2}$	$9.0X10^{-4}$	$2.4X10^{-2}$	$1.1X10^{-2}$	$3.1X10^{-1}$
Cm-247 (a)		3.0	$8.1X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.4X10^{-6}$	$9.3X10^{-5}$
Cm-248		$2.0X10^{-2}$	$5.4X10^{-1}$	$3.0X10^{-4}$	$8.1X10^{-3}$	$1.6X10^{-4}$	$4.2X10^{-3}$
Co-55	Cobalt (27)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.1X10^{5}$	$3.1X10^{6}$
Co-56		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.1X10^{3}$	$3.0X10^{4}$
Co-57		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$3.1X10^{2}$	$8.4X10^{3}$
Co-58		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.2X10^{3}$	$3.2X10^{4}$
Co-58m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$2.2X10^{5}$	$5.9X10^{6}$
Co-60		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.2X10^{1}$	$1.1X10^{3}$
Cr-51	Chromium (24)	$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$3.4X10^{3}$	$9.2X10^{4}$
Cs-129	Cesium (55)	4.0	$1.1X10^{2}$	4.0	$1.1X10^{2}$	$2.8X10^{4}$	$7.6X10^{5}$
Cs-131		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$3.8X10^{3}$	$1.0X10^{5}$
Cs-132		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$5.7X10^{3}$	$1.5X10^{5}$
Cs-134		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.8X10^{1}$	$1.3X10^{3}$
Cs-134m		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{5}$	$8.0X10^{6}$
Cs-135		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$4.3X10^{-5}$	$1.2X10^{-3}$
Cs-136		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.7X10^{3}$	$7.3X10^{4}$
Cs-137 (a)		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	3.2	$8.7X10^{1}$
Cu-64	Copper (29)	6.0	$1.6X10^{2}$	1.0	$2.7X10^{1}$	$1.4X10^{5}$	$3.9X10^{6}$
Cu-67		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.8X10^{4}$	$7.6X10^{5}$
Dy-159	Dysprosium (66)	$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$2.1X10^{2}$	$5.7X10^{3}$
Dy-165		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{5}$	$8.2X10^{6}$
Dy-166 (a)		$9.0X10^{-1}$	$2.4X10^{1}$	$3.0X10^{-1}$	8.1	$8.6X10^{3}$	$2.3X10^{5}$
Er-169	Erbium (68)	$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$3.1X10^{3}$	$8.3X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Er-171		$8.0X10^{-1}$	$2.2X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$9.0X10^{4}$	$2.4X10^{6}$
Eu-147	Europium (63)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.4X10^{3}$	$3.7X10^{4}$
Eu-148		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.0X10^{2}$	$1.6X10^{4}$
Eu-149		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$3.5X10^{2}$	$9.4X10^{3}$
Eu-150 (short lived)		2.0	$5.4X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.1X10^{4}$	$1.6X10^{6}$
Eu-150 (long lived)		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.1X10^{4}$	$1.6X10^{6}$
Eu-152		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	6.5	$1.8X10^{2}$
Eu-152m		$8.0X10^{-1}$	$2.2X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$8.2X10^{4}$	$2.2X10^{6}$
Eu-154		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	9.8	$2.6X10^{2}$
Eu-155		$2.0X10^{1}$	$5.4X10^{2}$	3.0	$8.1X10^{1}$	$1.8X10^{1}$	$4.9X10^{2}$
Eu-156		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.0X10^{3}$	$5.5X10^{4}$
F-18	Fluorine (9)	1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.5X10^{6}$	$9.5X10^{7}$
Fe-52 (a)	Iron (26)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.7X10^{5}$	$7.3X10^{6}$
Fe-55		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$8.8X10^{1}$	$2.4X10^{3}$
Fe-59		$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$1.8X10^{3}$	$5.0X10^{4}$
Fe-60 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-1}$	5.4	$7.4X10^{-4}$	$2.0X10^{-2}$
Ga-67	Gallium (31)	7.0	$1.9X10^{2}$	3.0	$8.1X10^{1}$	$2.2X10^{4}$	$6.0X10^{5}$
Ga-68		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.5X10^{6}$	$4.1X10^{7}$
Ga-72		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.1X10^{5}$	$3.1X10^{6}$
Gd-146 (a)	Gadolinium (64)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.9X10^{2}$	$1.9X10^{4}$
Gd-148		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	1.2	$3.2X10^{1}$
Gd-153		$1.0X10^{1}$	$2.7X10^{2}$	9.0	$2.4X10^{2}$	$1.3X10^{2}$	$3.5X10^{3}$
Gd-159		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.9X10^{4}$	$1.1X10^{6}$
Ge-68 (a)	Germanium (32)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.6X10^{2}$	$7.1X10^{3}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Ge-71		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.8X10^{3}$	$1.6X10^{5}$
Ge-77		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.3X10^{5}$	$3.6X10^{6}$
Hf-172 (a)	Hafnium (72)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.1X10^{1}$	$1.1X10^{3}$
Hf-175		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$3.9X10^{2}$	$1.1X10^{4}$
Hf-181		2.0	$5.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.3X10^{2}$	$1.7X10^{4}$
Hf-182		Unlimited	Unlimited	Unlimited	Unlimited	$8.1X10^{-6}$	$2.2X10^{-4}$
Hg-194 (a)	Mercury (80)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.3X10^{-1}$	3.5
Hg-195m (a)		3.0	$8.1X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Hg-197		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.2X10^{3}$	$2.5X10^{5}$
Hg-197m		$1.0X10^{1}$	$2.7X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.5X10^{4}$	$6.7X10^{5}$
Hg-203		5.0	$1.4X10^{2}$	1.0	$2.7X10^{1}$	$5.1X10^{2}$	$1.4X10^{4}$
Ho-166	Holmium (67)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.6X10^{4}$	$7.0X10^{5}$
Ho-166m		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.6X10^{-2}$	1.8
I-123	Iodine (53)	6.0	$1.6X10^{2}$	3.0	$8.1X10^{1}$	$7.1X10^{4}$	$1.9X10^{6}$
I-124		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$9.3X10^{3}$	$2.5X10^{5}$
I-125		$2.0X10^{1}$	$5.4X10^{2}$	3.0	$8.1X10^{1}$	$6.4X10^{2}$	$1.7X10^{4}$
I-126		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$2.9X10^{3}$	$8.0X10^{4}$
I-129		Unlimited	Unlimited	Unlimited	Unlimited	$6.5X10^{-6}$	$1.8X10^{-4}$
I-131		3.0	$8.1X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.6X10^{3}$	$1.2X10^{5}$
I-132		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.8X10^{5}$	$1.0X10^{7}$
I-133		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{4}$	$1.1X10^{6}$
I-134		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$9.9X10^{5}$	$2.7X10^{7}$
I-135 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.3X10^{5}$	$3.5X10^{6}$
In-111	Indium (49)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$1.5X10^{4}$	$4.2X10^{5}$

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						(TBq/g)	(Ci/g)
In-113m		4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$6.2X10^{5}$	$1.7X10^{7}$
In-114m (a)		$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$8.6X10^{2}$	$2.3X10^{4}$
In-115m		7.0	$1.9X10^{2}$	1.0	$2.7X10^{1}$	$2.2X10^{5}$	$6.1X10^{6}$
Ir-189 (a)	Iridium (77)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$1.9X10^{3}$	$5.2X10^{4}$
Ir-190		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$2.3X10^{3}$	$6.2X10^{4}$
Ir-192 (c)		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.4X10^{2}$	$9.2X10^{3}$
Ir-194		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$3.1X10^{4}$	$8.4X10^{5}$
K-40	Potassium (19)	$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$2.4X10^{-7}$	$6.4X10^{-6}$
K-42		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$2.2X10^{5}$	$6.0X10^{6}$
K-43		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{5}$	$3.3X10^{6}$
Kr-81	Krypton (36)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$7.8X10^{-4}$	$2.1X10^{-2}$
Kr-85		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$1.5X10^{1}$	$3.9X10^{2}$
Kr-85m		8.0	$2.2X10^{2}$	3.0	$8.1X10^{1}$	$3.0X10^{5}$	$8.2X10^{6}$
Kr-87		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.0X10^{6}$	$2.8X10^{7}$
La-137	Lanthanum (57)	$3.0X10^{1}$	$8.1X10^{2}$	6.0	$1.6X10^{2}$	$1.6X10^{-3}$	$4.4X10^{-2}$
La-140		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$2.1X10^{4}$	$5.6X10^{5}$
Lu-172	Lutetium (71)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{3}$	$1.1X10^{5}$
Lu-173		8.0	$2.2X10^{2}$	8.0	$2.2X10^{2}$	$5.6X10^{1}$	$1.5X10^{3}$
Lu-174		9.0	$2.4X10^{2}$	9.0	$2.4X10^{2}$	$2.3X10^{1}$	$6.2X10^{2}$
Lu-174m		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$2.0X10^{2}$	$5.3X10^{3}$
Lu-177		$3.0X10^{1}$	$8.1X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.1X10^{3}$	$1.1X10^{5}$
Mg-28 (a)	Magnesium (12)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.0X10^{5}$	$5.4X10^{6}$
Mn-52	Manganese (25)	$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.6X10^{4}$	$4.4X10^{5}$
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	$6.8X10^{-5}$	$1.8X10^{-3}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Mn-54		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$2.9X10^{2}$	$7.7X10^{3}$
Mn-56		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$8.0X10^{5}$	$2.2X10^{7}$
Mo-93	Molybdenum (42)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	$4.1X10^{-2}$	1.1
Mo-99 (a) (i)		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.8X10^{4}$	$4.8X10^{5}$
N-13	Nitrogen (7)	$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$5.4X10^{7}$	$1.5X10^{9}$
Na-22	Sodium (11)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.3X10^{2}$	$6.3X10^{3}$
Na-24		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$3.2X10^{5}$	$8.7X10^{6}$
Nb-93m	Niobium (41)	$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	8.8	$2.4X10^{2}$
Nb-94		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$6.9X10^{-3}$	$1.9X10^{-1}$
Nb-95		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.5X10^{3}$	$3.9X10^{4}$
Nb-97		$9.0X10^{-1}$	$2.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.9X10^{5}$	$2.7X10^{7}$
Nd-147	Neodymium (60)	6.0	$1.6X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{3}$	$8.1X10^{4}$
Nd-149		$6.0X10^{-1}$	$1.6X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$4.5X10^{5}$	$1.2X10^{7}$
Ni-59	Nickel (28)	Unlimited	Unlimited	Unlimited	Unlimited	$3.0X10^{-3}$	$8.0X10^{-2}$
Ni-63		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	2.1	$5.7X10^{1}$
Ni-65		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$7.1X10^{5}$	$1.9X10^{7}$
Np-235	Neptunium (93)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.2X10^{1}$	$1.4X10^{3}$
Np-236 (short-lived)		$2.0X10^{1}$	$5.4X10^{2}$	2.0	$5.4X10^{1}$	$4.7X10^{-4}$	$1.3X10^{-2}$
Np-236 (long-lived)		$9.0X10^{0}$	$2.4X10^{2}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$4.7X10^{-4}$	$1.3X10^{-2}$
Np-237		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{-3}$	$5.4X10^{-2}$	$2.6X10^{-5}$	$7.1X10^{-4}$
Np-239		7.0	$1.9X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$8.6X10^{3}$	$2.3X10^{5}$
Os-185	Osmium (76)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$2.8X10^{2}$	$7.5X10^{3}$
Os-191		$1.0X10^{1}$	$2.7X10^{2}$	2.0	$5.4X10^{1}$	$1.6X10^{3}$	$4.4X10^{4}$
Os-191m		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	$4.6X10^{4}$	$1.3X10^{6}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Os-193		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{4}$	$5.3X10^{5}$
Os-194 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.1X10^{1}$	$3.1X10^{2}$
P-32	Phosphorus (15)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.1X10^{4}$	$2.9X10^{5}$
P-33		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Pa-230 (a)	Protactinium (91)	2.0	$5.4X10^{1}$	$7.0X10^{-2}$	1.9	$1.2X10^{3}$	$3.3X10^{4}$
Pa-231		4.0	$1.1X10^{2}$	$4.0X10^{-4}$	$1.1X10^{-2}$	$1.7X10^{-3}$	$4.7X10^{-2}$
Pa-233		5.0	$1.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$7.7X10^{2}$	$2.1X10^{4}$
Pb-201	Lead (82)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$6.2X10^{4}$	$1.7X10^{6}$
Pb-202		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{1}$	$5.4X10^{2}$	$1.2X10^{-4}$	$3.4X10^{-3}$
Pb-203		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$1.1X10^{4}$	$3.0X10^{5}$
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	$4.5X10^{-6}$	$1.2X10^{-4}$
Pb-210 (a)		1.0	$2.7X10^{1}$	$5.0X10^{-2}$	1.4	2.8	$7.6X10^{1}$
Pb-212 (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$2.0X10^{-1}$	5.4	$5.1X10^{4}$	$1.4X10^{6}$
Pd-103 (a)	Palladium (46)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$2.8X10^{3}$	$7.5X10^{4}$
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	$1.9X10^{-5}$	$5.1X10^{-4}$
Pd-109		2.0	$5.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$7.9X10^{4}$	$2.1X10^{6}$
Pm-143	Promethium (61)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$1.3X10^{2}$	$3.4X10^{3}$
Pm-144		$7.0X10^{-1}$	$1.9X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.2X10^{1}$	$2.5X10^{3}$
Pm-145		$3.0X10^{1}$	$8.1X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	5.2	$1.4X10^{2}$
Pm-147		$4.0X10^{1}$	$1.1X10^{3}$	2.0	$5.4X10^{1}$	$3.4X10^{1}$	$9.3X10^{2}$
Pm-148m (a)		$8.0X10^{-1}$	$2.2X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$7.9X10^{2}$	$2.1X10^{4}$
Pm-149		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$
Pm-151		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.7X10^{4}$	$7.3X10^{5}$
Po-210	Polonium (84)	$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$1.7X10^{2}$	$4.5X10^{3}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Pr-142	Praseodymium (59)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.3X10^{4}$	$1.2X10^{6}$
Pr-143		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{3}$	$6.7X10^{4}$
Pt-188 (a)	Platinum (78)	1.0	$2.7X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$2.5X10^{3}$	$6.8X10^{4}$
Pt-191		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$8.7X10^{3}$	$2.4X10^{5}$
Pt-193		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	1.4	$3.7X10^{1}$
Pt-193m		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	$5.8X10^{3}$	$1.6X10^{5}$
Pt-195m		$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.2X10^{3}$	$1.7X10^{5}$
Pt-197		$2.0X10^{1}$	$5.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.2X10^{4}$	$8.7X10^{5}$
Pt-197m		$1.0X10^{1}$	$2.7X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.7X10^{5}$	$1.0X10^{7}$
Pu-236	Plutonium (94)	$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{-3}$	$8.1X10^{-2}$	$2.0X10^{1}$	$5.3X10^{2}$
Pu-237		$2.0X10^{1}$	$5.4X10^{2}$	$2.0X10^{1}$	$5.4X10^{2}$	$4.5X10^{2}$	$1.2X10^{4}$
Pu-238		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$6.3X10^{-1}$	$1.7X10^{1}$
Pu-239		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$2.3X10^{-3}$	$6.2X10^{-2}$
Pu-240		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$8.4X10^{-3}$	$2.3X10^{-1}$
Pu-241 (a)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-2}$	1.6	3.8	$1.0X10^{2}$
Pu-242		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$1.5X10^{-4}$	$3.9X10^{-3}$
Pu-244 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$6.7X10^{-7}$	$1.8X10^{-5}$
Ra-223 (a)	Radium (88)	$4.0X10^{-1}$	$1.1X10^{1}$	$7.0X10^{-3}$	$1.9X10^{-1}$	$1.9X10^{3}$	$5.1X10^{4}$
Ra-224 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$5.9X10^{3}$	$1.6X10^{5}$
Ra-225 (a)		$2.0X10^{-1}$	5.4	$4.0X10^{-3}$	$1.1X10^{-1}$	$1.5X10^{3}$	$3.9X10^{4}$
Ra-226 (a)		$2.0X10^{-1}$	5.4	$3.0X10^{-3}$	$8.1X10^{-2}$	$3.7X10^{-2}$	1.0
Ra-228 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$1.0X10^{1}$	$2.7X10^{2}$
Rb-81	Rubidium (37)	2.0	$5.4X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{5}$	$8.4X10^{6}$
Rb-83 (a)		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$6.8X10^{2}$	$1.8X10^{4}$

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						(TBq/g)	(Ci/g)
Rb-84		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.8X10^{3}$	$4.7X10^{4}$
Rb-86		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{3}$	$8.1X10^{4}$
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	$3.2X10^{-9}$	$8.6X10^{-8}$
Rb(nat)		Unlimited	Unlimited	Unlimited	Unlimited	$6.7X10^{6}$	$1.8X10^{8}$
Re-184	Rhenium (75)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$6.9X10^{2}$	$1.9X10^{4}$
Re-184m		3.0	$8.1X10^{1}$	1.0	$2.7X10^{1}$	$1.6X10^{2}$	$4.3X10^{3}$
Re-186		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$6.9X10^{3}$	$1.9X10^{5}$
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	$1.4X10^{-9}$	$3.8X10^{-8}$
Re-188		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.6X10^{4}$	$9.8X10^{5}$
Re-189 (a)		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{4}$	$6.8X10^{5}$
Re(nat)		Unlimited	Unlimited	Unlimited	Unlimited	0.0	$2.4X10^{-8}$
Rh-99	Rhodium (45)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.0X10^{3}$	$8.2X10^{4}$
Rh-101		4.0	$1.1X10^{2}$	3.0	$8.1X10^{1}$	$4.1X10^{1}$	$1.1X10^{3}$
Rh-102		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$4.5X10^{1}$	$1.2X10^{3}$
Rh-102m		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.3X10^{2}$	$6.2X10^{3}$
Rh-103m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$1.2X10^{6}$	$3.3X10^{7}$
Rh-105		$1.0X10^{1}$	$2.7X10^{2}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{4}$	$8.4X10^{5}$
Rn-222 (a)	Radon (86)	$3.0X10^{-1}$	8.1	$4.0X10^{-3}$	$1.1X10^{-1}$	$5.7X10^{3}$	$1.5X10^{5}$
Ru-97	Ruthenium (44)	5.0	$1.4X10^{2}$	5.0	$1.4X10^{2}$	$1.7X10^{4}$	$4.6X10^{5}$
Ru-103 (a)		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.2X10^{3}$	$3.2X10^{4}$
Ru-105		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.5X10^{5}$	$6.7X10^{6}$
Ru-106 (a)		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$1.2X10^{2}$	$3.3X10^{3}$
S-35	Sulphur (16)	$4.0X10^{1}$	$1.1X10^{3}$	3.0	$8.1X10^{1}$	$1.6X10^{3}$	$4.3X10^{4}$
Sb-122	Antimony (51)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.5X10^{4}$	$4.0X10^{5}$

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						(TBq/g)	(Ci/g)
Sb-124		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$6.5X10^{2}$	$1.7X10^{4}$
Sb-125		2.0	$5.4X10^{1}$	1.0	$2.7X10^{1}$	$3.9X10^{1}$	$1.0X10^{3}$
Sb-126		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.1X10^{3}$	$8.4X10^{4}$
Sc-44	Scandium (21)	$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$6.7X10^{5}$	$1.8X10^{7}$
Sc-46		$5.0X10^{-1}$	$1.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$1.3X10^{3}$	$3.4X10^{4}$
Sc-47		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.1X10^{4}$	$8.3X10^{5}$
Sc-48		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$5.5X10^{4}$	$1.5X10^{6}$
Se-75	Selenium (34)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$5.4X10^{2}$	$1.5X10^{4}$
Se-79		$4.0X10^{1}$	$1.1X10^{3}$	2.0	$5.4X10^{1}$	$2.6X10^{-3}$	$7.0X10^{-2}$
Si-31	Silicon (14)	$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.4X10^{6}$	$3.9X10^{7}$
Si-32		$4.0X10^{1}$	$1.1X10^{3}$	$5.0X10^{-1}$	$1.4X10^{1}$	3.9	$1.1X10^{2}$
Sm-145	Samarium (62)	$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.8X10^{1}$	$2.6X10^{3}$
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	$8.5X10^{-1}$	$2.3X10^{-8}$
Sm-151		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{1}$	$2.7X10^{2}$	$9.7X10^{-1}$	$2.6X10^{1}$
Sm-153		9.0	$2.4X10^{2}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.6X10^{4}$	$4.4X10^{5}$
Sn-113 (a)	Tin (50)	4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$3.7X10^{2}$	$1.0X10^{4}$
Sn-117m		7.0	$1.9X10^{2}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.0X10^{3}$	$8.2X10^{4}$
Sn-119m		$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{1}$	$8.1X10^{2}$	$1.4X10^{2}$	$3.7X10^{3}$
Sn-121m (a)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-1}$	$2.4X10^{1}$	2.0	$5.4X10^{1}$
Sn-123		$8.0X10^{-1}$	$2.2X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$3.0X10^{2}$	$8.2X10^{3}$
Sn-125		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{3}$	$1.1X10^{5}$
Sn-126 (a)		$6.0X10^{-1}$	$1.6X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.0X10^{-3}$	$2.8X10^{-2}$
Sr-82 (a)	Strontium (38)	$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$2.3X10^{3}$	$6.2X10^{4}$
Sr-85		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$8.8X10^{2}$	$2.4X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Sr-85m		5.0	$1.4X10^{2}$	5.0	$1.4X10^{2}$	$1.2X10^{6}$	$3.3X10^{7}$
Sr-87m		3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$4.8X10^{5}$	$1.3X10^{7}$
Sr-89		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.1X10^{3}$	$2.9X10^{4}$
Sr-90 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	5.1	$1.4X10^{2}$
Sr-91 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.3X10^{5}$	$3.6X10^{6}$
Sr-92 (a)		1.0	$2.7X10^{1}$	$3.0X10^{-1}$	8.1	$4.7X10^{5}$	$1.3X10^{7}$
T(H-3)	Tritium (1)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.6X10^{2}$	$9.7X10^{3}$
Ta-178 (long-lived)	Tantalum (73)	1.0	$2.7X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$4.2X10^{6}$	$1.1X10^{8}$
Ta-179		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$4.1X10^{1}$	$1.1X10^{3}$
Ta-182		$9.0X10^{-1}$	$2.4X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$2.3X10^{2}$	$6.2X10^{3}$
Tb-157	Terbium (65)	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$5.6X10^{-1}$	$1.5X10^{1}$
Tb-158		1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$5.6X10^{-1}$	$1.5X10^{1}$
Tb-160		1.0	$2.7X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$4.2X10^{2}$	$1.1X10^{4}$
Tc-95m (a)	Technetium (43)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$8.3X10^{2}$	$2.2X10^{4}$
Tc-96		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.2X10^{4}$	$3.2X10^{5}$
Tc-96m (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.4X10^{6}$	$3.8X10^{7}$
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	$5.2X10^{-5}$	$1.4X10^{-3}$
Tc-97m		$4.0X10^{1}$	$1.1X10^{3}$	1.0	$2.7X10^{1}$	$5.6X10^{2}$	$1.5X10^{4}$
Tc-98		$8.0X10^{-1}$	$2.2X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$3.2X10^{-5}$	$8.7X10^{-4}$
Tc-99		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.3X10^{-4}$	$1.7X10^{-2}$
Tc-99m		$1.0X10^{1}$	$2.7X10^{2}$	4.0	$1.1X10^{2}$	$1.9X10^{5}$	$5.3X10^{6}$
Te-121	Tellurium (52)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.4X10^{3}$	$6.4X10^{4}$
Te-121m		5.0	$1.4X10^{2}$	3.0	$8.1X10^{1}$	$2.6X10^{2}$	$7.0X10^{3}$
Te-123m		8.0	$2.2X10^{2}$	1.0	$2.7X10^{1}$	$3.3X10^{2}$	$8.9X10^{3}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Te-125m		$2.0X10^{1}$	$5.4X10^{2}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.7X10^{2}$	$1.8X10^{4}$
Te-127		$2.0X10^{1}$	$5.4X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$9.8X10^{4}$	$2.6X10^{6}$
Te-127m (a)		$2.0X10^{1}$	$5.4X10^{2}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.5X10^{2}$	$9.4X10^{3}$
Te-129		$7.0X10^{-1}$	$1.9X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$7.7X10^{5}$	$2.1X10^{7}$
Te-129m (a)		$8.0X10^{-1}$	$2.2X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$1.1X10^{3}$	$3.0X10^{4}$
Te-131m (a)		$7.0X10^{-1}$	$1.9X10^{1}$	$5.0X10^{-1}$	$1.4X10^{1}$	$3.0X10^{4}$	$8.0X10^{5}$
Te-132 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$3.1X10^{4}$	$3.0X10^{5}$
Th-227	Thorium (90)	$1.0X10^{1}$	$2.7X10^{2}$	$5.0X10^{-3}$	$1.4X10^{-1}$	$1.1X10^{3}$	$3.1X10^{4}$
Th-228 (a)		$5.0X10^{-1}$	$1.4X10^{1}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$3.0X10^{1}$	$8.2X10^{2}$
Th-229		5.0	$1.4X10^{2}$	$5.0X10^{-4}$	$1.4X10^{-2}$	$7.9X10^{-3}$	$2.1X10^{-1}$
Th-230		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$7.6X10^{-4}$	$2.1X10^{-2}$
Th-231		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.0X10^{4}$	$5.3X10^{5}$
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	$4.0X10^{-9}$	$1.1X10^{-7}$
Th-234 (a)		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$8.6X10^{2}$	$2.3X10^{4}$
Th(nat)		Unlimited	Unlimited	Unlimited	Unlimited	$8.1X10^{-9}$	$2.2X10^{-7}$
Ti-44 (a)	Titanium (22)	$5.0X10^{-1}$	$1.4X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	6.4	$1.7X10^{2}$
Tl-200	Thallium (81)	$9.0X10^{-1}$	$2.4X10^{1}$	$9.0X10^{-1}$	$2.4X10^{1}$	$2.2X10^{4}$	$6.0X10^{5}$
Tl-201		$1.0X10^{1}$	$2.7X10^{2}$	4.0	$1.1X10^{2}$	$7.9X10^{3}$	$2.1X10^{5}$
Tl-202		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$2.0X10^{3}$	$5.3X10^{4}$
Tl-204		$1.0X10^{1}$	$2.7X10^{2}$	$7.0X10^{-1}$	$1.9X10^{1}$	$1.7X10^{1}$	$4.6X10^{2}$
Tm-167	Thulium (69)	7.0	$1.9X10^{2}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.1X10^{3}$	$8.5X10^{4}$
Tm-170		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.2X10^{2}$	$6.0X10^{3}$
Tm-171		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$
U-230 (fast lung absorption) (a)(d)	Uranium (92)	$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-1}$	2.7	$1.0X10^{3}$	$2.7X10^{4}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
U-230 (medium lung absorption) (a)(e)		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{-3}$	$1.1X10^{-1}$	$1.0X10^{3}$	$2.7X10^{4}$
U-230 (slow lung absorption) (a)(f)		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{-3}$	$8.1X10^{-2}$	$1.0X10^{3}$	$2.7X10^{4}$
U-232 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$1.0X10^{-2}$	$2.7X10^{-1}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-232 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$7.0X10^{-3}$	$1.9X10^{-1}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-232 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{2}$	$1.0X10^{-3}$	$2.7X10^{-2}$	$8.3X10^{-1}$	$2.2X10^{1}$
U-233 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-2}$	2.4	$3.6X10^{-4}$	$9.7X10^{-3}$
U-233 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$3.6X10^{-4}$	$9.7X10^{-3}$
U-233 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$3.6X10^{-4}$	$9.7X10^{-3}$
U-234 (fast lung absorption) (d)		$4.0X10^{1}$	$1.1X10^{3}$	$9.0X10^{-2}$	2.4	$2.3X10^{-4}$	$6.2X10^{-3}$
U-234 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.3X10^{-4}$	$6.2X10^{-3}$
U-234 (slow lung absorption) (f)		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.3X10^{-4}$	$6.2X10^{-3}$
U-235 (all lung absorption types) (a),(d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	$8.0X10^{-8}$	$2.2X10^{-6}$
U-236 (fast lung absorption) (d)		Unlimited	Unlimited	Unlimited	Unlimited	$2.4X10^{-6}$	$6.5X10^{-5}$
U-236 (medium lung absorption) (e)		$4.0X10^{1}$	$1.1X10^{3}$	$2.0X10^{-2}$	$5.4X10^{-1}$	$2.4X10^{-6}$	$6.5X10^{-5}$
U-236 (slow lung		$4.0X10^{1}$	$1.1X10^{3}$	$6.0X10^{-3}$	$1.6X10^{-1}$	$2.4X10^{-6}$	$6.5X10^{-5}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
absorption) (f)							
U-238 (all lung absorption types) (d),(e),(f)		Unlimited	Unlimited	Unlimited	Unlimited	$1.2X10^{-8}$	$3.4X10^{-7}$
U (nat)		Unlimited	Unlimited	Unlimited	Unlimited	$2.6X10^{-8}$	$7.1X10^{-7}$
U (enriched to 20% or less) (g)		Unlimited	Unlimited	Unlimited	Unlimited	See Table 257-6	See Table 257-6
U (dep)		Unlimited	Unlimited	Unlimited	Unlimited	See Table 257-6	(See Table 257-5)
V-48	Vanadium (23)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$6.3X10^{3}$	$1.7X10^{5}$
V-49		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.0X10^{2}$	$8.1X10^{3}$
W-178 (a)	Tungsten (74)	9.0	$2.4X10^{2}$	5.0	$1.4X10^{2}$	$1.3X10^{3}$	$3.4X10^{4}$
W-181		$3.0X10^{1}$	$8.1X10^{2}$	$3.0X10^{1}$	$8.1X10^{2}$	$2.2X10^{2}$	$6.0X10^{3}$
W-185		$4.0X10^{1}$	$1.1X10^{3}$	$8.0X10^{-1}$	$2.2X10^{1}$	$3.5X10^{2}$	$9.4X10^{3}$
W-187		2.0	$5.4X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$2.6X10^{4}$	$7.0X10^{5}$
W-188 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$3.0X10^{-1}$	8.1	$3.7X10^{2}$	$1.0X10^{4}$
Xe-122 (a)	Xenon (54)	$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$4.8X10^{4}$	$1.3X10^{6}$
Xe-123		2.0	$5.4X10^{1}$	$7.0X10^{-1}$	$1.9X10^{1}$	$4.4X10^{5}$	$1.2X10^{7}$
Xe-127		4.0	$1.1X10^{2}$	2.0	$5.4X10^{1}$	$1.0X10^{3}$	$2.8X10^{4}$
Xe-131m		$4.0X10^{1}$	$1.1X10^{3}$	$4.0X10^{1}$	$1.1X10^{3}$	$3.1X10^{3}$	$8.4X10^{4}$
Xe-133		$2.0X10^{1}$	$5.4X10^{2}$	$1.0X10^{1}$	$2.7X10^{2}$	$6.9X10^{3}$	$1.9X10^{5}$
Xe-135		3.0	$8.1X10^{1}$	2.0	$5.4X10^{1}$	$9.5X10^{4}$	$2.6X10^{6}$
Y-87 (a)	Yttrium (39)	1.0	$2.7X10^{1}$	1.0	$2.7X10^{1}$	$1.7X10^{4}$	$4.5X10^{5}$
Y-88		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$5.2X10^{2}$	$1.4X10^{4}$
Y-90		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$2.0X10^{4}$	$5.4X10^{5}$
Y-91		$6.0X10^{-1}$	$1.6X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$9.1X10^{2}$	$2.5X10^{4}$
Y-91m		2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$1.5X10^{6}$	$4.2X10^{7}$

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1(Ci)[b]	A_2 (TBq)	A_2(Ci)[b]	Specific activity	
						(TBq/g)	(Ci/g)
Y-92		$2.0X10^{-1}$	5.4	$2.0X10^{-1}$	5.4	$3.6X10^{5}$	$9.6X10^{6}$
Y-93		$3.0X10^{-1}$	8.1	$3.0X10^{-1}$	8.1	$1.2X10^{5}$	$3.3X10^{6}$
Yb-169	Ytterbium (70)	4.0	$1.1X10^{2}$	1.0	$2.7X10^{1}$	$8.9X10^{2}$	$2.4X10^{4}$
Yb-175		$3.0X10^{1}$	$8.1X10^{2}$	$9.0X10^{-1}$	$2.4X10^{1}$	$6.6X10^{3}$	$1.8X10^{5}$
Zn-65	Zinc (30)	2.0	$5.4X10^{1}$	2.0	$5.4X10^{1}$	$3.0X10^{2}$	$8.2X10^{3}$
Zn-69		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.8X10^{6}$	$4.9X10^{7}$
Zn-69m (a)		3.0	$8.1X10^{1}$	$6.0X10^{-1}$	$1.6X10^{1}$	$1.2X10^{5}$	$3.3X10^{6}$
Zr-88	Zirconium (40)	3.0	$8.1X10^{1}$	3.0	$8.1X10^{1}$	$6.6X10^{2}$	$1.8X10^{4}$
Zr-93		Unlimited	Unlimited	Unlimited	Unlimited	$9.3X10^{-5}$	$2.5X10^{-3}$
Zr-95 (a)		2.0	$5.4X10^{1}$	$8.0X10^{-1}$	$2.2X10^{1}$	$7.9X10^{2}$	$2.1X10^{4}$
Zr-97 (a)		$4.0X10^{-1}$	$1.1X10^{1}$	$4.0X10^{-1}$	$1.1X10^{1}$	$7.1X10^{4}$	$1.9X10^{6}$

[a] A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days.
[b] The values of A_1 and A_2 in Curies (Ci) are approximate and for information only; the regulatory standard units are Terabecquerels (TBq), (subsection (ff)(1) of this section - Determination of A_1 and A_2, Section I.).
[c] The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.
[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.
[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
[g] These values apply to unirradiated uranium only.
[h] A_1 = 0.1 TBq (2.7 Ci) and A_2 = 0.001 TBq (0.027 Ci) for Cf-252 for domestic use.
[i] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

Figure: 25 TAC §289.257(ff)(7)

Table 257-4

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225	Actinium (89)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ac-227		$1.0X10^{-1}$	$2.7X10^{-12}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ac-228		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-105	Silver (47)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-108m (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-110m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ag-111		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Al-26	Aluminum (13)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Am-241	Americium (95)	1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Am-242m (b)		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Am-243 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ar-37	Argon (18)	$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ar-39		$1.0X10^{7}$	$2.7X10^{-4}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ar-41		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
As-72	Arsenic (33)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
As-73		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
As-74		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
As-76		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
As-77		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
At-211	Astatine (85)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-193	Gold (79)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-194		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Au-195		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Au-198		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Au-199		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-131	Barium (56)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-133		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-133m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ba-140 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Be-7	Beryllium (4)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Be-10		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-205	Bismuth (83)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-206		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bi-207		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-210		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Bi-210m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bi-212 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Bk-247	Berkelium (97)	1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Bk-249		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Br-76	Bromine (35)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Br-77		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Br-82		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
C-11	Carbon (6)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
C-14		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-41	Calcium (20)	$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ca-45		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ca-47		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-109	Cadmium (48)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-113m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-115		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cd-115m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-139	Cerium (58)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-141		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ce-143		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ce-144 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cf-248	Californium (98)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-249		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cf-250		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-251		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cf-252		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cf-253		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cf-254		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cl-36	Chlorine (17)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cl-38		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-240	Curium (96)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-241		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cm-242		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cm-243		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-244		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-245		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Cm-246		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Cm-247		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cm-248		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Co-55	Cobalt (27)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-56		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Co-57		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-58		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Co-58m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Co-60		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cr-51	Chromium (24)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Cs-129	Cesium (55)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-131		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cs-132		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-134		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cs-134m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-135		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Cs-136		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Cs-137 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Cu-64	Copper (29)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Cu-67		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Dy-159	Dysprosium (66)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Dy-165		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Dy-166		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Er-169	Erbium (68)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Er-171		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-147	Europium (63)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-148		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-149		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Eu-150 (short lived)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-150 (long lived)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-152		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-152m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-154		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Eu-155		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Eu-156		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
F-18	Fluorine (9)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-52	Iron (26)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-55		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-59		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Fe-60		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ga-67	Gallium (31)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ga-68		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ga-72		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Gd-146	Gadolinium (64)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Gd-148		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Gd-153		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Gd-159		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ge-68	Germanium (32)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ge-71		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ge-77		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Hf-172	Hafnium (72)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-175		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-181		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hf-182		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-194	Mercury (80)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-195m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-197		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Hg-197m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Hg-203		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ho-166	Holmium (67)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ho-166m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-123	Iodine (53)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
I-124		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-125		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-126		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-129		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-131		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-132		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-133		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
I-134		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
I-135		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-111	Indium (49)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
In-113m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-114m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
In-115m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ir-189	Iridium (77)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ir-190		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ir-192		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ir-194		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
K-40	Potassium (19)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
K-42		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
K-43		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Kr-81	Krypton (36)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Kr-85		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{4}$	$2.7X10^{-7}$
Kr-85m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{10}$	$2.7X10^{-1}$
Kr-87		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
La-137	Lanthanum (57)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
La-140		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Lu-172	Lutetium (71)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Lu-173		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-174		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-174m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Lu-177		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Mg-28	Magnesium (12)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mn-52	Manganese (25)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mn-53		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{9}$	$2.7X10^{-2}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Mn-54		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Mn-56		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Mo-93	Molybdenum (42)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Mo-99		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
N-13	Nitrogen (7)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Na-22	Sodium (11)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Na-24		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Nb-93m	Niobium (41)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Nb-94		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nb-95		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nb-97		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nd-147	Neodymium (60)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Nd-149		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ni-59	Nickel (28)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ni-63		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ni-65		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Np-235	Neptunium (93)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Np-236 (short-lived)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Np-236 (long-lived)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Np-237 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Np-239		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-185	Osmium (76)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Os-191		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Os-191m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Os-193		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Os-194		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
P-32	Phosphorus (15)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
P-33		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pa-230	Protactinium (91)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pa-231		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Pa-233		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pb-201	Lead (82)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-202		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-203		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pb-205		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pb-210 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pb-212 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pd-103	Palladium (46)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pd-107		$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Pd-109		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-143	Promethium (61)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-144		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-145		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pm-147		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pm-148m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-149		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pm-151		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Po-210	Polonium (84)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pr-142	Praseodymium (59)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pr-143		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-188	Platinum (78)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-191		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-193		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pt-193m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pt-195m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-197		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pt-197m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Pu-236	Plutonium (94)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-237		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Pu-238		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-239		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-240		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Pu-241		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Pu-242		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Pu-244		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ra-223 (b)	Radium (88)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-224 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-225		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Ra-226 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Ra-228 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Rb-81	Rubidium (37)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-83		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Rb-84		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rb-86		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Rb-87		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rb(nat)		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Re-184	Rhenium (75)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-184m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-186		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re-187		$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Re-188		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Re-189		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Re(nat)		$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Rh-99	Rhodium (45)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-101		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rh-102		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-102m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Rh-103m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Rh-105		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Rn-222 (b)	Radon (86)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{8}$	$2.7X10^{-3}$
Ru-97	Ruthenium (44)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ru-103		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ru-105		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ru-106 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
S-35	Sulphur (16)	$1.0X10^{5}$	$2.7X10^{-6}$	$1.0X10^{8}$	$2.7X10^{-3}$
Sb-122	Antimony (51)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{4}$	$2.7X10^{-7}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Sb-124		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sb-125		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sb-126		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sc-44	Scandium (21)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sc-46		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sc-47		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sc-48		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Se-75	Selenium (34)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Se-79		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Si-31	Silicon (14)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Si-32		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sm-145	Samarium (62)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sm-147		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sm-151		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
Sm-153		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-113	Tin (50)	$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-117m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-119m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-121m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sn-123		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sn-125		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sn-126		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-82	Strontium (38)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-85		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Sr-85m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Sr-87m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-89		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Sr-90 (b)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{4}$	$2.7X10^{-7}$
Sr-91		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Sr-92		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
T(H-3)	Tritium (1)	$1.0X10^{6}$	$2.7X10^{-5}$	$1.0X10^{9}$	$2.7X10^{-2}$
Ta-178 (long-lived)	Tantalum (73)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Ta-179		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Ta-182		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Tb-157	Terbium (65)	$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tb-158		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tb-160		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-95m	Technetium (43)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-96		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-96m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-97		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{8}$	$2.7X10^{-3}$
Tc-97m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-98		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tc-99		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
Tc-99m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-121	Tellurium (52)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-121m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Te-123m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Te-125m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-127		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-127m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Te-129		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-129m		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-131m		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Te-132		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Th-227	Thorium (90)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-228 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-229 (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Th-230		1.0	$2.7X10^{-11}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-231		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Th-232		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
Th-234 (b)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Th (nat) (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
Ti-44	Titanium (22)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
Tl-200	Thallium (81)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-201		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-202		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tl-204		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{4}$	$2.7X10^{-7}$
Tm-167	Thulium (69)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tm-170		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$
Tm-171		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{8}$	$2.7X10^{-3}$
U-230 (fast lung absorption)	Uranium (92)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
(b),(d)					
U-230 (medium lung absorption) (e)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-230 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-232 (fast lung absorption) (b),(d)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U-232 (medium lung absorption) (e)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-232 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-233 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-233 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-233 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-234 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-234 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-234 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
U-235 (all lung absorption types) (b),(d),(e),(f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-236 (fast lung absorption) (d)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-236 (medium lung absorption) (e)		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
U-236 (slow lung absorption) (f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U-238 (all lung absorption types) (b),(d),(e),(f)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{4}$	$2.7X10^{-7}$
U (nat) (b)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U (enriched to 20% or less) (g)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
U (dep)		1.0	$2.7X10^{-11}$	$1.0X10^{3}$	$2.7X10^{-8}$
V-48	Vanadium (23)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$
V-49		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-178	Tungsten (74)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
W-181		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-185		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{7}$	$2.7X10^{-4}$
W-187		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
W-188		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Xe-122	Xenon (54)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-123		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-127		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Xe-131m		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{4}$	$2.7X10^{-7}$
Xe-133		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{4}$	$2.7X10^{-7}$
Xe-135		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{10}$	$2.7X10^{-1}$
Y-87	Yttrium (39)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-88		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-90		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{5}$	$2.7X10^{-6}$
Y-91		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{6}$	$2.7X10^{-5}$

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Y-91m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Y-92		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Y-93		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{5}$	$2.7X10^{-6}$
Yb-169	Ytterbium (70)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{7}$	$2.7X10^{-4}$
Yb-175		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Zn-65	Zinc (30)	$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zn-69		$1.0X10^{4}$	$2.7X10^{-7}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zn-69m		$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-88	Zirconium (40)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-93 (b)		$1.0X10^{3}$	$2.7X10^{-8}$	$1.0X10^{7}$	$2.7X10^{-4}$
Zr-95		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{6}$	$2.7X10^{-5}$
Zr-97 (b)		$1.0X10^{1}$	$2.7X10^{-10}$	$1.0X10^{5}$	$2.7X10^{-6}$

[a] [Reserved]

[b] Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Cs-137	Ba-137m
Ce-134	La-134
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220	Po-216
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208(0.36), Po-212 (0.64)

Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228
Th-226	Ra-222, Rn-218, Po-214
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-20
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
U-240	Np-240m
Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

[c][Reserved]

[d] These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

[e] These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and hexavalent compounds in both normal and accident conditions of transport.

[f] These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.

[g] These values apply to unirradiated uranium only.

Figure: 25 TAC §289.257(ff)(8)

Table 257-5: General Values For A_1 And A_2

Contents	A_1		A_2		Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Bq)	Activity limits for exempt consignments (Ci)
	(TBq)	(Ci)	(TBq)	(Ci)				
Only beta or gamma emitting radionuclides are known to be present	1×10^{-1}	2.7×10^{0}	2×10^{-2}	5.4×10^{-1}	1×10^{1}	2.7×10^{-10}	1×10^{4}	2.7×10^{-7}
Only alpha emitting radionuclides are known to be present	2×10^{-1}	5.4×10^{0}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}
No relevant data are available	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}

Figure: 25 TAC §289.257(ff)(9)

Table 257-6: Activity-mass Relationships for Uranium

Uranium Enrichment* wt % U-235 present	Specific Activity TBq/g	Specific Activity Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1.0	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5.0	1.0×10^{-7}	2.7×10^{-6}
10.0	1.8×10^{-7}	4.8×10^{-6}
20.0	3.7×10^{-7}	1.0×10^{-5}
35.0	7.4×10^{-7}	2.0×10^{-5}
50.0	9.3×10^{-7}	2.5×10^{-5}
90.0	2.2×10^{-6}	5.8×10^{-5}
93.0	2.6×10^{-6}	7.0×10^{-5}
95.0	3.4×10^{-6}	9.1×10^{-5}

* The figures for uranium include representative values for the activity of the uranium-235 which is concentrated during the enrichment process.

Figure: 28 TAC §3.9504(b)

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration,

policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because _____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____
Applicant's Signature and Printed Name Date

_____ _____
Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. ____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older--are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Figure: 28 TAC §3.9505(1)

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?
___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older--are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?
Is this a tax free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Figure: 28 TAC §3.9505(2)

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one--or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

Figure: 30 TAC §37.825(d)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of the owner, operator, or guarantor). This letter is in support of the use of (insert: "the financial test of self-insurance," and/or "guarantee") to demonstrate financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in the amount of at least (insert: dollar amount) annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this (insert: "owner or operator," and/or "guarantor"): (List for each facility: the name, address of the facility where tanks assured by this financial test are located and, for those facilities located in Texas, the TCEQ facility identification number. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the registration information submitted under §334.7 of this title (relating to Registration for USTs)).

This firm is the owner, operator, or guarantor of the following facilities for which financial assurance is being demonstrated under other TCEQ, EPA regulations, or state program authorized by EPA through a financial test or guarantee. (For each program area identify: the facility name, physical and mailing addresses, federal or state equivalent regulations, permit number, current cost estimate, and liability coverage. Identify for each current cost estimate the amount designated for closure, post closure, corrective action, or liability coverage.)

(a) Municipal solid waste management facilities under 30 TAC Chapter 330, 40 Code of Federal Regulations (CFR) Part 258 or equivalent $_____

(b) Underground injection control facilities under 30 TAC Chapter 331, 40 CFR Part 144 or equivalent $_____

(c) PCB storage facilities under 40 CFR Part 761 or equivalent $_____

(d) Hazardous waste treatment, storage, and disposal facilities under 30 TAC Chapter 335, 40 CFR Parts 264 and 265 or equivalent $_____

(e) Additional environmental obligations not shown above $_____

Total (a)-(e) $_____

This (insert "owner or operator," or "guarantor") has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on its financial statements for the latest completed fiscal year, which was (insert latest fiscal year-end date).

(Fill in the information for Alternative I if the criteria of §37.825(b) of this title (relating to Financial Test of Self-Insurance) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of §37.825(c) of this title are being used to demonstrate compliance with the financial test requirements.)

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee $_____

2. Sum of current cost estimates for closure, post closure, corrective action, and liability coverage (total of (a)-(e) directly above) $_____

3. Sum of lines 1 and 2 $_____

4. Total tangible assets $_____

5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6) $_____

6. Tangible net worth (subtract line 5 from line 4) $_____

	Yes	No
7. Is line 6 at least $10 million?	____	____
8. Is line 6 at least 10 times line 3?	____	____
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	____	____
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	____	____
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?	____	____
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? (Answer "Yes" only if both criteria have been met.)	____	____

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee $_____

2. Sum of current cost estimates for closure, post closure, corrective action and liability coverage (total of (a)-(e) directly above) $_____

3. Sum of lines 1 and 2 $_____

4. Total tangible assets $_____

5. Total liabilities (if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6) $_____

6. Tangible net worth (subtract line 5 from line 4) $_____

7. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.) $_____

	Yes	No
8. Is line 6 at least $10 million?	____	____
9. Is line 6 at least 6 times line 3?	____	____
10. Are at least 90 percent of assets located in the U.S.? (If "No," complete line 11.)	____	____
11. Is line 7 at least 6 times line 3?	____	____

(Fill in either lines 12-15 or lines 16-18)

12. Current assets $_____

13. Current liabilities $_____

14. Net working capital (subtract line 13 from 12) $_____

	Yes	No
15. Is line 14 at least 6 times line 3?	____	____

16. Current bond rating of most recent bond issue _____

17. Name of rating service _____

18. Date of maturity of bond _____

	Yes	No
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	____	____

(If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.)

(For both Alternative I and Alternative II complete the certification with this statement.)

I hereby certify that the wording of this letter is identical to the wording specified in §37.825, as this regulation was constituted on the date shown immediately below.

(Insert signature) _____

(Insert name) _____

(Insert title) _____

(Insert date) _____

Figure: 30 TAC §37.830(c)

GUARANTEE

Guarantee made this (insert date) by (insert name of guaranteeing entity), a business entity organized under the laws of the state of (insert name of state), herein referred to as guarantor, to the Texas Commission on Environmental Quality (TCEQ) and to any and all third parties, and obligees, on behalf of (insert owner or operator) of (insert business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria of 30 TAC §37.825(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 30 TAC, §37.830(b).

2. (Insert owner or operator) owns or operates the following underground storage tank(s) covered by this guarantee: (List the number of tanks at each facility, the names(s) and address(es) and, for those facilities located in Texas, the TCEQ facility identification number of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration information submitted under 30 TAC §334.7, and the name and address of the facility.) This guarantee satisfies Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems) requirements for assuring funding for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the above-identified underground storage tank(s) in the amount of (insert dollar amount) per occurrence and (insert dollar amount) annual aggregate.

3. (Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator) or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)) (insert owner or operator), guarantor guarantees to the TCEQ and to any and all third parties that:

In the event that (insert owner or operator) fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Executive Director of the TCEQ has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Executive Director of the TCEQ, shall fund a standby trust fund in accordance with the provisions of §37.880 of this title (relating to Drawing on Financial Assurance Mechanisms), in an amount not to exceed the coverage limits specified above.

In the event that the Executive Director of the TCEQ determines that (insert owner or operator) has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with Chapter 334, Subchapter D of this title (relating to Release Reporting and Corrective Action) of the guarantor upon written instructions from the executive director of the TCEQ shall fund a standby trust in accordance with the provisions of 30 TAC §37.880, in an amount not to exceed the coverage limits specified above.

If (insert owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from injury or damage, the guarantor, upon written instructions from the

Executive Director of the TCEQ, shall fund a standby trust in accordance with the provisions of 30 TAC §37.880 to satisfy these judgement(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

4. Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 30 TAC §37.825(b) or (c) and (d), the guarantor shall send within 120 days of this failure, by certified mail, notice to (insert owner or operator). The guarantee will terminate 120 days from the date of receipt of the notice by (insert owner or operator), as evidenced by the return receipt.

5. Guarantor agrees to notify (insert owner or operator) and the Executive Director of the TCEQ by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of (insert owner or operator) under 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

7. Guarantor agrees to remain bound under this guarantee for so long as (insert owner or operator) must comply with the applicable financial responsibility requirements of 30 TAC Chapter 37, Subchapter I for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to (insert owner or operator), this cancellation to become effective no earlier than 120 days after receipt of the notice by (insert owner or operator), as evidenced by the return receipt.

8. The guarantor's obligation does not apply to any of the following:

a. Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

b. Bodily injury to an employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator);

c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum underground storage tank;

e. Bodily damage or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 30 TAC §37.815.

9. Guarantor expressly waived notice of acceptance of this guarantee by the TCEQ, by any or all third parties, or by (insert owner or operator).

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 TAC §37.830(c), as this regulation was constituted on the effective date shown immediately below.

Effective date: _____

(Insert name of guarantor) _____

(Insert authorized signature for guarantor) _____

(Insert name of person signing)_____

(Insert title of person signing) _____

Signature of witness or notary: _____

Figure: 30 TAC §37.835(b)(1)

ENDORSEMENT

Name: (Insert name of each covered location) _____

Address: (Insert address of each covered location)_____

Policy Number: _____

Period of Coverage: (Insert current policy period) _____

Name of Insurer or Risk Retention Group: _____

Address of Insurer or Risk Retention Group:_____

Name of Insured:_____

Address of Insured:_____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

(List the number of tanks at each facility, the names(s) and address(es) of the facility(ies) where the tanks are located and, for those facilities located in Texas, the TCEQ facility identification number. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration information submitted under §334.7 of this title (relating to Registration for USTs), and the name and address of the facility.) for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy arising from operating the underground storage tank(s) identified in this paragraph.

The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location), exclusive of legal defense costs. This coverage is provided under (insert policy number). The effective date of said policy is (insert date).

2. The insurance afforded with respect to these occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subparagraphs (a) - (e) of this paragraph are to be amended to conform with these subparagraphs:

a. Bankruptcy or insolvency of the insured shall not relieve the (insert "Insurer" or "Group") of its obligations under the policy to which this endorsement is attached.

b. The (insert "Insurer" or "Group") is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any payment made by the (insert "Insurer" or "Group"). This provision

does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §37.825 of this title (relating to Financial Test of Self-Insurance), §37.830 of this title (relating to Guarantee), §37.835 of this title (relating to Insurance and Risk Retention Group Coverage), §37.840 of this title (relating to Surety Bond), §37.845 of this title (relating to Letter of Credit), and §37.850 of this title (relating to Trust Fund).

c. Whenever requested by the Executive Director of the Texas Commission on Environmental Quality (TCEQ), the (insert "Insurer" or "Group") agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the (insert "Insurer" or "Group"), except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of this written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

(Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the (insert "Insurer" or "Group") within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.)

I hereby certify that the wording of this instrument is identical to the wording in §37.835(b)(1) of this title (relating to Insurance and Risk Retention Group Coverage) and that the (insert "Insurer" or "Group") is (insert "licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer") in Texas.

(Insert signature of authorized representative of Insurer or Risk Retention Group)_____

(Insert name of person signing) _____

(Insert title of person signing) _____,
Authorized Representative of (Insert name of Insurer or Risk Retention Group)

(Insert address of Representative) _____

Figure: 30 TAC §37.835(b)(2)

CERTIFICATE OF INSURANCE

Name: (Insert name of each covered location) _____

Address: (Insert address of each covered location) _____

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: (Insert current policy period) _____

Name of Insurer or Risk Retention Group:_____

Address of Insurer or Risk Retention Group: _____

Name of Insured: _____

Address of Insured:_____

Certification:

1. (Insert name of Insurer or Risk Retention Group), (insert the "Insurer" or "Group"), as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s): (List the number of tanks at each facility, the name(s) and address(es) of the facility(ies) where the tanks are located and, for those facilities located in Texas, the TCEQ facility identification number. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration information submitted under §334.7 of this title (relating to Registration for USTs), and the name and address of the facility.) for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy arising from operating the underground storage tank(s) identified above.

The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location), exclusive of legal defense costs. This coverage is provided under (insert policy number). The effective date of said policy is (insert date).

2. The (insert "Insurer" or "Group") further certifies the following with respect to the insurance described in paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the (insert "Insurer" or "Group") of its obligations under the policy to which this certificate applies.

b. The (insert "Insurer" or "Group") is liable for the payment of amounts within any deductible applicable to the policy, to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any payment made by the (insert "Insurer" or "Group"). This provision

does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §37.825 of this title (relating to Financial Test of Self-Insurance), §37.830 of this title (relating to Guarantee), §37.835 of this title (relating to Insurance and Risk Retention Group Coverage), §37.840 of this title (relating to Surety Bond), §37.845 of this title (relating to Letter of Credit), and §37.850 of this title (relating to Trust Fund).

c. Whenever requested by the Executive Director of the TCEQ, the (insert "Insurer" or "Group") agrees to furnish to the executive director a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the (insert "Insurer" or "Group"), except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of this written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

(Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the (insert "Insurer" or "Group") within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.)

I hereby certify that the wording of this instrument is identical to the wording in 30 TAC §37.835(b)(2), and that the (insert "Insurer" or "Group") is (insert "licensed to transact the business of insurance" or "eligible to provide insurance as an excess or surplus lines insurer") in Texas.

(Insert signature of authorized representative of Insurer) _____

(Type name) _____

(Insert title) _____,

Authorized Representative of (insert name of Insurer or Risk Retention Group)

(Insert address of representative) _____

Figure: 30 TAC §37.840(b)

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Principal: (insert legal name and business address of owner or operator) _____

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") _____

State of incorporation (if applicable): _____

Surety(ies): (insert name(s) and business address(es)) _____

Scope of Coverage: (List the number of tanks at each facility, the name(s) and address(es) of the facility(ies) where the tanks are located and, for those facilities located in Texas, the TCEQ facility identification number. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the name and address of the facility and the tank identification number provided in the registration information submitted under §334.7 of this title (relating to Registration for USTs). List the coverage guaranteed by the bond for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tank.)

Penal sums of bond: Per occurrence $_____Annual aggregate $_____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Texas Commission on Environmental Quality (TCEQ) in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in these sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of these sums only as is set forth opposite the name of this Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Texas Water Code, Chapter 26, Subchapter I, as amended, to provide financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tanks identified above; and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide this financial assurance;

Now, therefore, the conditions of the obligation are that if the Principal shall faithfully take corrective action, in accordance with Chapter 334, Subchapter D of this title (relating to Release Reporting and Corrective Action) and the Executive Director of the TCEQ's instructions, and compensate injured third parties for bodily injury and property damage caused by accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as

specified in Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems) within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

This obligation does not apply to any of the following:

a. Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

b. Bodily injury to an employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator);

c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum underground storage tank; or

e. Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 30 TAC §37.815.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Executive Director of the TCEQ that the Principal has failed to take corrective action, in accordance with 30 TAC Chapter 334, Subchapter D and the executive director's instructions, and/or compensate injured third parties as guaranteed by this bond, the Surety(ies) shall either perform corrective action in accordance with 30 TAC Chapter 334, Subchapter D and the executive director's instructions, and provide third-party liability compensation or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Executive Director of the TCEQ under §37.880 of this title (relating to Drawing on Financial Assurance Mechanisms).

Upon notification by the TCEQ Executive Director that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the executive director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the executive director under 30 TAC §37.880.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until this payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in §37.840(b) of this title (relating to Surety Bond), as this regulation was constituted on the date this bond was executed.

PRINCIPAL

(Insert signature(s)) _____

(Insert name(s)) _____

(Insert title(s)) _____

(Insert corporate seal)

CORPORATE SURETY(IES)

(Insert name and address) _____

State of Incorporation: _____

Liability limit: $_____

(Insert signature(s)) _____

(Insert name(s) and titles(s)) _____

(Insert corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $_____

Figure: 30 TAC §37.845(b)

IRREVOCABLE STANDBY LETTER OF CREDIT

(Insert name and address of issuing institution)

(Insert name and address of Executive Director of the Texas Commission on Environmental Quality)

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of (insert owner or operator name) of (insert address) up to the aggregate amount of (insert in words) U.S. dollars ($(insert dollar amount)), available upon presentation of:

1. your sight draft, bearing reference to this letter of credit, No. _____; and

2. your signed statement reading as follows: "I certify that the amount of the draft is payable under regulations issued under authority of Texas Water Code, Chapter 26, Subchapter I, as amended".

This letter of credit may be drawn on to cover taking corrective action and/or "compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the underground storage tank(s) identified below in the amount of (insert in words), $(insert dollar amount), per occurrence and (insert in words), $(insert dollar amount), annual aggregate:

(List the number of tanks at each facility, the name(s) and address(es) of the facility(ies) where the tanks are located and, for those facilities located in Texas, the TCEQ facility identification number. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the name and address of the facility and the tank identification number provided in the registration information submitted under §334.7 of this title (relating to Registration for USTs).)

The letter of credit may not be drawn on to cover any of the following:

a. Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

b. Bodily injury to an employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator);

c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum underground storage tank; or

e. Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Responsibility).

This letter of credit is effective as of (insert date) and shall expire on (insert date), but this expiration date shall be automatically extended for a period of (insert at least the length of the original term) on (insert expiration date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify (insert owner or operator) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event the (insert owner or operator) is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by (insert owner or operator), as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor this draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (insert owner or operator) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in §37.845(b) of this title (relating to Letter of Credit) as this regulation was constituted on the date shown immediately below.

(Insert signature(s) and title(s) of official(s) of issuing institution) _____

(Insert date) _____

This credit is subject to (insert " the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

Figure: 30 TAC §37.855(b)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (insert date) by and between (insert name of the owner or operator), a (insert name of state) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (insert name of corporate trustee), (insert "Incorporated in the state of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Commission on Environmental Quality (TCEQ) has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed or corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility, the name(s) and address(es) of the facility(ies) where the tanks are located and, for those facilities located in Texas, the TCEQ facility identification number that are covered by the standby trust agreement;

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

a. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

b. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

c. The term "Executive Director" means the Executive Director of the TCEQ.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the (insert the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments). (This paragraph is only applicable to the standby trust agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the TCEQ. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. (Note: The Fund is established initially as a standby to receive payments and shall not consist of any property.) Payments made by the provider of financial assurance under the Executive Director's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee under this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the TCEQ.

Section 4. Payment for Corrective Action and Third-Party Liability Claims. The Trustee shall make payments from the Fund as the Executive Director shall direct, in writing, to provide for the

payment of the costs of taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

a. Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

b. Bodily injury to an employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator);

c. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or water craft;

d. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by (insert owner or operator) that is not the direct result of a release from a petroleum underground storage tank; or

e. Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §37.815 of this title (relating to Amount and Scope of Required Financial Assurance).

The Trustee shall reimburse the Grantor, or other persons as specified by the Executive Director, from the Fund for corrective action expenditures and/or third-party liability claims in amounts as the Executive Director specifies in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Executive Director specifies in writing. Upon refund, these funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with these matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

a. Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 United States Code §80A-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

b. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

c. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

a. To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

b. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC §80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote these shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

a. To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any sale or other disposition;

b. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

c. To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing these securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of these securities in a qualified central depository even though, when so deposited, these securities may be merged and held in bulk in the name of the nominee of this depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all these securities are part of the Fund;

d. To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

e. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this

Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but this resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before this change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by persons as are designated in the attached Schedule B or other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Executive Director to the Trustee shall be in writing, signed by the Executive Director or the Executive Director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with these orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Executive Director hereunder has occurred. The Trustee shall have no duty to act in the absence of these orders, requests, and instructions from the Grantor and/or the Executive Director, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Executive Director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Executive Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Executive Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide this defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of Texas, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in §37.855(b) of this title (relating to Standby Trust Fund), as this regulation was constituted on the date written above.

(Insert signature of grantor) _____

(Insert name of the grantor) _____

(Insert title) _____

Attest:

(Insert signature of trustee) _____

(Insert name of the trustee) _____

(Insert title) _____

(Insert seal)

Attest:

(Insert signature of witness) _____

(Insert name of witness) _____

(Insert title) _____

(Insert seal)

Figure 1: 30 TAC Chapter 113--Preamble

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
A (§113.100)	General Provisions	June 15, 2004
B (§113.105)	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Section 112(j)	May 30, 2003
C (§113.106)	List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List	November 29, 2004
F (§113.110)	Synthetic Organic Chemical Manufacturing Industry	June 23, 2003
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater	June 23, 2003
L (§113.170)	Coke Oven Batteries	June 23, 2003
M (§113.180)	Perchloroethylene Dry Cleaning Facilities	June 23, 2003
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	July 19, 2004
O (§113.200)	Ethylene Oxide Emissions Standards for Sterilization Facilities	June 23, 2003
Q (§113.220)	Industrial Process Cooling Towers	June 23, 2003
R (§113.230)	Gasoline Distribution Facilities	December 19, 2003
S (§113.240)	Pulp and Paper Industry	June 23, 2003
T (§113.250)	Halogenated Solvent Cleaning	June 23, 2003
U (§113.260)	Group I Polymers and Resins	June 23, 2003
W (§113.280)	Epoxy Resins Production and Non-Nylon Polyamides Production	June 23, 2003
Y (§113.300)	Marine Vessel Loading	June 23, 2003
AA (§113.320)	Phosphoric Acid Manufacturing Plants	June 23, 2003
BB (§113.330)	Phosphate Fertilizers Production Plants	June 23, 2003
DD (§113.350)	Off-Site Waste and Recovery Operations	June 23, 2003
GG (§113.380)	Aerospace Manufacturing and Rework Facilities	June 23, 2003
HH (§113.390)	Oil and Natural Gas Production Facilities	June 23, 2003
II (§113.400)	Shipbuilding and Ship Repair (Surface Coating)	June 23, 2003
KK (§113.420)	Printing and Publishing	June 23, 2003
LL (§113.430)	Primary Aluminum Reduction Plants	June 23, 2003
MM (§113.440)	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills	May 6, 2004
SS (§113.500)	Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process	July 12, 2002
XX (§113.550)	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations	July 12, 2002
YY (§113.560)	Generic Maximum Achievable Control Technology Standards	February 10, 2003
CCC (§113.600)	Steel Pickling - HCl Process Facilities and	June 23, 2003

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
	Hydrochloric Acid Regeneration Plants	
EEE (§113.620)	Hazardous Waste Combustors	June 23, 2003
GGG (§113.640)	Pharmaceuticals Production	June 23, 2003
HHH (§113.650)	Natural Gas Transmission and Storage Facilities	June 23, 2003
JJJ (§113.670)	Group IV Polymers and Resins	June 2, 2004
LLL (§113.690)	Portland Cement Manufacturing Industry	June 23, 2003
MMM (§113.700)	Pesticide Active Ingredient Production	June 23, 2003
NNN (§113.710)	Wool Fiberglass Manufacturing	June 23, 2003
OOO (§113.720)	Manufacture of Amino/Phenolic Resins	June 23, 2003
PPP (§113.730)	Polyether Polyols Production	June 23, 2003 and July 1, 2004
QQQ (§113.740)	Primary Copper Smelting	June 12, 2002
RRR (§113.750)	Secondary Aluminum Production	June 23, 2003
TTT (§113.770)	Primary Lead Smelting	June 23, 2003
UUU (§113.780)	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units	April 11, 2002
XXX (§113.810)	Ferroalloys Production: Ferromanganese and Silicomanganese	June 23, 2003
AAAA (§113.840)	Municipal Solid Waste Landfills	January 16, 2003
CCCC (§113.860)	Manufacturing of Nutritional Yeast	May 21, 2001
EEEE (§113.880)	Organic Liquids Distribution (Non-Gasoline)	February 3, 2004
FFFF (§113.890)	Miscellaneous Organic Chemical Manufacturing	November 10, 2003
GGGG (§113.900)	Solvent Extraction for Vegetable Oil Production	April 5, 2002
HHHH (§113.910)	Wet-Formed Fiberglass Mat Production	April 11, 2002
IIII (§113.920)	Surface Coating of Automobiles and Light-Duty Trucks	April 26, 2004
JJJJ (§113.930)	Paper and Other Web Coating	December 4, 2002
KKKK (§113.940)	Surface Coating of Metal Cans	November 13, 2003
MMMM (§113.960)	Surface Coating of Miscellaneous Metal Parts and Products	April 26, 2004
NNNN (§113.970)	Surface Coating of Large Appliances	July 23, 2002
OOOO (§113.980)	Printing, Coating, and Dyeing of Fabrics and Other Textiles	May 29, 2003
PPPP (§113.990)	Surface Coating of Plastic Parts and Products	April 26, 2004
QQQQ (§113.1000)	Surface Coating of Wood Building Products	May 28, 2003
RRRR (§113.1010)	Surface Coating of Metal Furniture	May 23, 2003
TTTT (§113.1030)	Leather Finishing Operations	February 27, 2002
UUUU (§113.1040)	Cellulose Products Manufacturing	June 11, 2002
WWWW (§113.1060)	Reinforced Plastic Composites Production	April 21, 2003
XXXX (§113.1070)	Rubber Tire Manufacturing	March 12, 2003
YYYY (§113.1080)	Stationary Combustion Turbines	August 18, 2004
ZZZZ (§113.1090)	Stationary Reciprocating Internal Combustion Engines	June 15, 2004
AAAAA (§113.1100)	Lime Manufacturing Plants	January 5, 2004

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title	Original Incorporation (Commission Adoption)
BBBBB (§113.1110)	Semiconductor Manufacturing	May 22, 2003
CCCCC (§113.1120)	Coke Ovens: Pushing, Quenching, and Battery Stacks	April 22, 2003
EEEEE (§113.1140)	Iron and Steel Foundries	April 22, 2004
FFFFF (§113.1150)	Integrated Iron and Steel Manufacturing Facilities	May 20, 2003
GGGGG (§113.1160)	Site Remediation	October 8, 2003
HHHHH (§113.1170)	Miscellaneous Coating Manufacturing	December 11, 2003 & December 29, 2003
IIIII (§113.1180)	Mercury Emissions from Mercury Cell Chlor-Alkali Plants	December 19, 2003
JJJJJ (§113.1190)	Brick and Structural Clay Products Manufacturing	May 16, 2003 and May 28, 2003
KKKKK (§113.1200)	Clay Ceramics Manufacturing	May 16, 2003 and May 28, 2003
LLLLL (§113.1210)	Asphalt Processing and Asphalt Roofing Manufacturing	May 7, 2003
MMMMM (§113.1220)	Flexible Polyurethane Foam Fabrication Operations	April 14, 2003
NNNNN (§113.1230)	Hydrochloric Acid Production	April 17, 2003
PPPPP (§113.1250)	Engine Test Cells/Stands	August 28, 2003
QQQQQ (§113.1260)	Friction Materials Manufacturing Facilities	October 18, 2002
RRRRR (§113.1270)	Taconite Iron Ore Processing	October 30, 2003
SSSSS (§113.1280)	Refractory Products Manufacturing	April 16, 2003
TTTTT (§113.1290)	Primary Magnesium Refining	October 10, 2003

Figure 2: 30 TAC Chapter 113--Preamble

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
DDDD (§113.870)	Plywood and Composite Wood Products
DDDDDD (§113.1390)	Polyvinyl Chloride and Copolymers Production Area Sources
EEEEEE (§113.1400)	Primary Copper Smelting Area Sources
FFFFFF (§113.1410)	Secondary Copper Smelting Area Sources
GGGGGG (§113.1420)	Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium

Figure: 30 TAC Chapter 328--Preamble

Format for Computer Recycling Notification and Recovery Plan

Computer Recycling Notification and Recovery Plan
for
{Name of manufacturer}

{Street address (no PO Boxes)}
{Mailing address}
{Email address}
{Phone number}

Notification
{Name of manufacturer} has {or "will have, starting on September 1, 2008"} a compliant collection program.

Recovery Plan
All of the following applies exclusively to computer equipment that has been:

- labeled with {name of manufacturer}'s brands, both those in use and no longer in use and
- purchased by an individual primarily for personal or home business use.

Consumers do not have to pay a separate fee at the time of recycling to recycle used computer equipment.
{Name of manufacturer} provides for the collection from a consumer of any used computer equipment.
{Name of manufacturer} provides for the recycling or reuse of used computer equipment.
Consumers can find out specifically how and where to return computer equipment at {www.manufacturerlinktothisinformation.com, i.e. a direct link to the recycling information, not merely www.manfacturername.com).}

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Modified Piece Rate Order

Under the Texas Minimum Wage Act, Texas Labor Code, Chapter 62, Subchapter C, the Texas Department of Agriculture (TDA) has set piece rates for each hand-harvested agricultural commodity that is commercially produced in substantial quantity in the state of Texas. Piece rates were last modified in 2001, due to amendments made to the federal and Texas minimum wage laws, which increased the minimum wage to $5.15 per hour. Piece rate workers must be paid, at a minimum, the equivalent of the federal minimum wage.

On May 25, 2007, federal legislation was signed into law which included an increase of the federal minimum wage in three phases: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009. TDA is modifying its existing piece rates to conform with the changes made to the federal minimum wage. The following piece rates are effective on the same schedule as the federal minimum wage rates.

Modified Piece Rate Order

Commodity	Payment Unit	Median	($5.15 Per Hour) Existing Piece Rate	($5.85 Per Hour) Piece Rate Effective: July 24, 2007	($6.55 Per Hour) Piece Rate Effective: July 24, 2008	($7.25 Per Hour) Piece Rate Effective: July 24, 2009
Beans, Green or snap	Pound	29.67	0.17	0.20	0.22	0.24
Beets, whole	72-bunch	0.94	5.48	6.22	6.97	7.71
(tops & roots)						
Blackberries	Pound	8.44	0.61	0.69	0.78	0.86
Broccoli, processing	cst-lbs	1.14	4.52	5.13	5.75	6.36
(bunching)						
Cabbage, fresh market	50-lb sack	6.40	0.80	0.91	1.02	1.13
sacked						
Cabbage, fresh market	50-lb wire bound crate	6.25	0.82	0.94	1.05	1.16
crated						
Carrots	5-peck basket	7.38	0.70	0.79	0.89	0.98
Collard greens	Dozen bunch units	10.00	0.52	0.59	0.66	0.73
Corn, sweet, large fancy	Bushel crate	3.81	1.35	1.54	1.72	1.90
Corn, sweet, small fancy	Bushel crate	5.00	1.03	1.17	1.31	1.45
Cucumber, fresh market	5-peck basket	2.00	2.58	2.93	3.28	3.63
Cucumber, processing	2 U.S. 5-gallon cans	2.82	1.83	2.07	2.32	2.57
Dandelion	100-bunches	1.00	5.15	5.85	6.55	7.25
Endive	100-bunches	1.38	3.73	4.24	4.75	5.25
Kale	Bushel basket	5.76	0.89	1.02	1.14	1.26
Kohrabi	72-bunches	0.75	6.87	7.80	8.73	9.67
Mustard greens	Dozen bunch units	6.67	0.77	0.88	0.98	1.09
Okra, fresh market	Pound	36.00	0.14	0.16	0.18	0.20
Onions, dry, white	50-lb sack or 2 U.S.	4.35		1.34	1.51	1.67
	5 gal. Cans					
Onions, dry, yellow	50-lb sack or 2 U.S.	4.50	1.14	1.30	1.46	1.61
	5 gal. Cans					
Onions, green, transplant	Dozen bunch units	7.29	0.71	0.80	0.90	0.99
Parsley, (Parnisps)	100-bunch units	1.83	2.81	3.20	3.58	3.96
bunch & tied						
Pecans, all varieties	Per pound	17.82	0.29	0.33	0.37	0.41
Peas, Blackeyes &	Per pound	45.82	0.11	0.13	0.14	0.16
Purple hull						
Peppers, bell	5-peck basket	7.11	0.72	0.82	0.92	1.02
Peppers, cherry hots or	5-peck basket	0.45	11.44	13.00	14.56	16.11
sweets						
Peppers, jalapeno	5-peck basket	1.23	4.19	4.76	5.33	5.89
Peppers, Louisiana hots	5-peck basket	0.90	5.72	6.50	7.28	8.06
Peppers, banana	5-peck basket	3.54	1.45	1.65	1.85	2.05
Potatoes, red & white	50-lb sack	12.50	0.41	0.47	0.52	0.58
Spinach	Bushel-basket	7.62	0.68	0.77	0.86	0.95
			($5.15 Per Hour)	($5.85 Per Hour)	($6.55 Per Hour)	($7.25 Per Hour)

Commodity	Payment Unit	Median	Existing Piece Rate	Piece Rate Effective: July 24, 2007	Piece Rate Effective: July 24, 2008	Piece Rate Effective: July 24, 2009
Turnip, roots or bulbs	5-peck basket	2.37	2.17	2.47	2.76	3.06
Turnip, tops	Bushel-basket	7.21	0.71	0.81	0.91	1.01
Turnips whole	Dozen bunch units	6.13	0.84	0.95	1.07	1.18
(bunched & tied)						
Tomatoes, fresh market	5-gallon container	6.83	0.75	0.86	0.96	1.06
or green wraps						
	Tomato bag	2.91	1.77	2.01	2.25	2.49
	5-peck basket	2.94	1.75	1.99	2.23	2.47
	1/2 bushel basket	7.34	0.70	0.80	0.89	0.99
	Tomato crate	2.93	1.76	2.00	2.24	2.47
	Divided citrus box	1.63	3.16	3.59	4.02	4.45
	Bushel basket	3.67	1.40	1.59	1.78	1.98
Tomatoes, processing	Bushel basket	5.10	1.01	1.15	1.28	1.42
	Tomato crate	4.01	1.28	1.46	1.63	1.81
	1/2 bushel basket	10.20	0.50	0.57	0.64	0.71
Oranges, clean tree	Full citrus bag	3.65	1.41	1.60	1.79	1.99
all varieties						
	1/2 citrus bag	7.30	0.71	0.80	0.90	0.99
	Tomato bag	8.00	0.64	0.73	0.82	0.91
	5-peck basket	8.06	0.64	0.73	0.81	0.90
	Pallet	0.43	11.98	13.60	15.23	16.86
	Undivided citrus box	5.89	0.87	0.99	1.11	1.23
	Divided citrus box	4.48	1.15	1.31	1.46	1.62
Oranges, ring pick,	Full citrus bag	4.83	1.07	1.21	1.36	1.50
all varieties						
	1/2 citrus bag	9.67	0.53	0.60	0.68	0.75
	Pallets	0.57	9.04	10.26	11.49	12.72
	Divided citrus box	6.11	0.84	0.96	1.07	1.19
Grapefruit, clean tree	Full citrus bag	6.31	0.82	0.93	1.04	1.15
ruby reds						
	1/2 citrus bag	12.62	0.41	0.46	0.52	0.57
	Tomato bag	13.72	0.38	0.43	0.48	0.53
	Bushel basket	17.42	0.30	0.34	0.38	0.42
	5-peck basket	13.94	0.37	0.42	0.47	0.52
	Divided citrus box	7.99	0.64	0.73	0.82	0.91
	Pallet	0.75	6.87	7.80	8.73	9.67
Grapefruit, ring pick	Full citrus bag	6.55	0.79	0.89	1.00	1.11
ruby reds	1/2 citrus bag	13.11	0.04	0.45	0.50	0.55
	Tomato bag	14.25	0.36	0.41	0.46	0.51
	Pallet	0.77	6.69	7.60	8.51	9.42
	Undivided citrus box	10.58	0.49	0.55	0.62	0.69
	Divided citrus box	8.04	0.64	0.73	0.81	0.90

TRD-200706315

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 11, 2007

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Request for Applications: Catfish Grant Program

In accordance with Section 9002 of Title IX the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, the Commodity Credit Corporation (CCC) will provide a grant to the Texas Department of Agriculture (TDA) for distribution to eligible catfish producers adversely affected by officially declared disasters in 2005, 2006 or 2007. On December 21, 2007, TDA will begin accepting assistance fund applications from eligible catfish producers.

Eligibility Criteria. To be eligible for assistance funds the catfish producer must meet the following criteria:

1. Must have suffered catfish feed losses that occurred as a direct result of the same disaster condition described in the Presidential, Secretarial or APLN designation for the eligible county during the disaster period as provided at the following URL: http://disaster.fsa.usda.gov;

2. Must have raised catfish in a controlled environment as part of a farming operation during the covered period;

3. Must have had a risk in the production of such catfish;

4. Must have not already received, or receive in the future, assistance funds covered under any other Federal program for the same catfish feed losses; and

5. Must have records on file at an applicable Farm Service Agency (FSA) county office indicating compliance with (i) adjusted gross income limitations contained in section 1001D of the Food Security Act of 1985 and (ii) conservation compliance provisions according to regulations found at 7 CFR Part 12.

Covered Losses. Funds can only be paid for documented catfish feed losses incurred because of disasters January 2, 2005 - December 31, 2005, or January 1, 2006 - December 31, 2006 or January 1, 2007 - February 27, 2007. No farming operation may receive more than $80,000 in fund payments under this grant program, except for general partnerships and joint ventures whose assistance shall not exceed $80,000 times the number of members that constitute the general partnership or joint venture.

Submitting an Application. Applications will be accepted beginning December 21, 2007. Applications will be available on TDA's Web site at: www.tda.state.tx.us, or available upon request from TDA by calling (512) 475-1615. Applications must be received at TDA headquarters in Austin by the deadline provided below, and addressed to: Catfish Feed Grant Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or faxed to (888) 203-5567. Applications must be certified by the applicant, notarized by a certified notary and include supporting documentation for losses claimed. Documentation must be provided before the applicant will be paid. **Applicants will not be reimbursed for losses already claimed and reimbursed under this Grant Program or any other Federal program, including the Aquaculture Grant Program and the Catfish Grant Program for 2005 hurricane relief administered by TDA.**

Applicants will also be required to complete an application for a State of Texas Payee ID number, as part of the application for the catfish assistance funds, if they do not already have this number on file with the Office of the State Comptroller.

Deadline for Submission of Applications. Applications must be received by TDA by **January 15, 2008.**

The amount of assistance each eligible catfish producer is eligible to receive will be the lesser of the following:

A. the product of multiplying the number of tons of catfish feed purchased in "elected period of loss" by the eligible payment amount for that period ($24 per ton for January 2, 2005 - December 31, 2005; $26 per ton for January 1, 2006 - December 31, 2006 or $29 per ton for January 1, 2007 - February 27, 2007); **or**

B. the value of the catfish producer's **documented** eligible losses, which include total value of damaged or destroyed feed, plus value of lost feeding days, plus the costs incurred from increased feed costs, as determined by the Department. TDA will distribute funds after all valid applications are processed and funds are received from the U.S. Department of Agriculture.

Further Information. Additional information about the catfish grant program and application process can be found on TDA's website. In addition, catfish producers may contact TDA's External Relations Division at (512) 475-1615 or grants@tda.state.tx.us, for more information.

TRD-200706334
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 12, 2007

♦ ♦ ♦

Office of the Attorney General

Child Support Guidelines - 2008 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been reviewed by legal counsel and found to be within the agency's authority to publish.

For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison at (512) 463-2096.

EMPLOYED PERSONS
2008 TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)*	Federal Income Taxes**	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$200.00	$12.40	$2.90	$0.00	$184.70
$300.00	$18.60	$4.35	$0.00	$277.05
$400.00	$24.80	$5.80	$0.00	$369.40
$500.00	$31.00	$7.25	$0.00	$461.75
$600.00	$37.20	$8.70	$0.00	$554.10
$700.00	$43.40	$10.15	$0.00	$646.45
$800.00	$49.60	$11.60	$5.42	$733.38
$900.00	$55.80	$13.05	$15.42	$815.73
$1,000.00	$62.00	$14.50	$25.42	$898.08
$1,014.00***	$62.87	$14.70	$26.82	$909.61
$1,100.00	$68.20	$15.95	$35.42	$980.43
$1,135.33****	$70.39	$16.46	$38.95	$1,009.53
$1,200.00	$74.40	$17.40	$45.42	$1,062.78
$1,300.00	$80.60	$18.85	$55.42	$1,145.13
$1,400.00	$86.80	$20.30	$65.42	$1,227.48
$1,500.00	$93.00	$21.75	$79.69	$1,305.56
$1,600.00	$99.20	$23.20	$94.69	$1,382.91
$1,700.00	$105.40	$24.65	$109.69	$1,460.26
$1,800.00	$111.60	$26.10	$124.69	$1,537.61
$1,900.00	$117.80	$27.55	$139.69	$1,614.96
$2,000.00	$124.00	$29.00	$154.69	$1,692.31
$2,100.00	$130.20	$30.45	$169.69	$1,769.66
$2,200.00	$136.40	$31.90	$184.69	$1,847.01
$2,300.00	$142.60	$33.35	$199.69	$1,924.36
$2,400.00	$148.80	$34.80	$214.69	$2,001.71
$2,500.00	$155.00	$36.25	$229.69	$2,079.06
$2,600.00	$161.20	$37.70	$244.69	$2,156.41
$2,700.00	$167.40	$39.15	$259.69	$2,233.76
$2,800.00	$173.60	$40.60	$274.69	$2,311.11
$2,900.00	$179.80	$42.05	$289.69	$2,388.46
$3,000.00	$186.00	$43.50	$304.69	$2,465.81
$3,100.00	$192.20	$44.95	$319.69	$2,543.16
$3,200.00	$198.40	$46.40	$334.69	$2,620.51
$3,300.00	$204.60	$47.85	$349.69	$2,697.86
$3,400.00	$210.80	$49.30	$364.69	$2,775.21
$3,500.00	$217.00	$50.75	$383.85	$2,848.40
$3,600.00	$223.20	$52.20	$408.85	$2,915.75
$3,700.00	$229.40	$53.65	$433.85	$2,983.10
$3,800.00	$235.60	$55.10	$458.85	$3,050.45
$3,900.00	$241.80	$56.55	$483.85	$3,117.80
$4,000.00	$248.00	$58.00	$508.85	$3,185.15
$4,250.00	$263.50	$61.63	$571.35	$3,353.52
$4,500.00	$279.00	$65.25	$633.85	$3,521.90
$4,750.00	$294.50	$68.88	$696.35	$3,690.27
$5,000.00	$310.00	$72.50	$758.85	$3,858.65
$5,250.00	$325.50	$76.13	$821.35	$4,027.02
$5,500.00	$341.00	$79.75	$883.85	$4,195.40
$5,750.00	$356.50	$83.38	$946.35	$4,363.77
$6,000.00	$372.00	$87.00	$1,008.85	$4,532.15
$6,250.00	$387.50	$90.63	$1,071.35	$4,700.52
$6,500.00	$403.00	$94.25	$1,133.85	$4,868.90
$6,750.00	$418.50	$97.88	$1,196.35	$5,037.27
$7,000.00	$434.00	$101.50	$1,258.85	$5,205.65
$7,500.00	$465.00	$108.75	$1,389.35	$5,536.90
$8,000.00	$496.00	$116.00	$1,529.35	$5,858.65
$8,500.00	$527.00*****	$123.25	$1,669.35	$6,180.40
$9,000.00	$527.00	$130.50	$1,809.35	$6,533.15
$9,500.00	$527.00	$137.75	$1,949.35	$6,885.90
$10,000.00	$527.00	$145.00	$2,089.35	$7,238.65
$10,370.45******	$527.00	$150.37	$2,193.08	$7,500.00
$10,500.00	$527.00	$152.25	$2,229.35	$7,591.40
$11,000.00	$527.00	$159.50	$2,369.35	$7,944.15
$11,500.00	$527.00	$166.75	$2,509.35	$8,296.90
$12,000.00	$527.00	$174.00	$2,649.35	$8,649.65
$12,500.00	$527.00	$181.25	$2,789.35	$9,002.40
$13,000.00	$527.00	$188.50	$2,929.35	$9,355.15
$13,500.00	$527.00	$195.75	$3,069.90	$9,707.35
$14,000.00	$527.00	$203.00	$3,211.53	$10,058.47
$14,500.00	$527.00	$210.25	$3,355.29	$10,407.46
$15,000.00	$527.00	$217.50	$3,522.21	$10,733.29

Footnotes to Employed Persons 2008 Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,500.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction ($5,450.00).

For a single taxpayer with an adjusted gross income in excess of $159,950.00, the deduction for the personal exemption is reduced by one-third (1/3) of two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $159,950.00. The deduction for the personal exemption is no longer reduced for adjusted gross income in excess of $282,450.00. For example, monthly gross wages of $15,000.00 times 12 months equals $180,000.00. The excess over $159,950.00 is $20,050.00. $20,050.00 divided by $2,500.00 equals 8.02. The 8.02 amount is rounded up to 9. The reduction percentage is 6.0% (1/3 x 2% x 9 = 6.0%). The $3,500.00 deduction for one personal exemption is reduced by $210.00 ($3,500.00 x 6.0% = $210.00) to $3,290.00 ($3,500.00 - $210.00 = $3,290.00). For adjusted gross income in excess of $282,450.00 the deduction for the personal exemption is $2,333.33.

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage from July 24, 2007 through July 23, 2008 ($5.85 per hour) for a 40-hour week for a full year. $5.85 per hour x 40 hours per week x 52 weeks per year equals $12,168.00 per year. One-twelfth (1/12) of $12,168.00 equals $1,014.00.

**** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage from July 24, 2008 through July 23, 2009 ($6.55 per hour) for a 40-hour week for a full year. $6.55 per hour x 40 hours per week x 52 weeks per year equals $13,624.00 per year. One-twelfth (1/12) of $13,624.00 equals $1,135.33.

***** For annual gross wages above $102,000.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2008 maximum Old-Age, Survivors and Disability Insurance tax of $6,324.00 per person (6.2% of the first $102,000.00 of annual gross wages equals $6,324.00). One-twelfth (1/12) of $6,324.00 equals $527.00.

******This amount represents the point where the monthly gross wages of an employed individual would result in $7,500.00 of net resources.

* *

References Relating to Employed Persons 2008 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated October 19, 2007, and appearing in 72 Fed. Reg. 60,703 (October 25, 2007)

      (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2008 for Single Taxpayers

(1) Revenue Procedure 2007-66, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2007-45, dated November 5, 2007

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2007-66, Section 3.11(1), which appears in Internal Revenue Bulletin 2007-45, dated November 5, 2007

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2007-66, Section 3.19, which appears in Internal Revenue Bulletin 2007-45, dated November 5, 2007

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

SELF-EMPLOYED PERSONS
2008 TAX CHART

Monthly Net Earnings From Self-Employment *	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)**	Federal Income Taxes***	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$200.00	$22.90	$5.36	$0.00	$171.74
$300.00	$34.35	$8.03	$0.00	$257.62
$400.00	$45.81	$10.71	$0.00	$343.48
$500.00	$57.26	$13.39	$0.00	$429.35
$600.00	$68.71	$16.07	$0.00	$515.22
$700.00	$80.16	$18.75	$0.00	$601.09
$800.00	$91.61	$21.43	$0.00	$686.96
$900.00	$103.06	$24.10	$9.06	$763.78
$1,000.00	$114.51	$26.78	$18.35	$840.36
$1,100.00	$125.97	$29.46	$27.65	$916.92
$1,200.00	$137.42	$32.14	$36.94	$993.50
$1,300.00	$148.87	$34.82	$46.23	$1,070.08
$1,400.00	$160.32	$37.49	$55.53	$1,146.66
$1,500.00	$171.77	$40.17	$64.82	$1,223.24
$1,600.00	$183.22	$42.85	$77.73	$1,296.20
$1,700.00	$194.67	$45.53	$91.67	$1,368.13
$1,800.00	$206.13	$48.21	$105.61	$1,440.05
$1,900.00	$217.58	$50.88	$119.55	$1,511.99
$2,000.00	$229.03	$53.56	$133.49	$1,583.92
$2,100.00	$240.48	$56.24	$147.43	$1,655.85
$2,200.00	$251.93	$58.92	$161.37	$1,727.78
$2,300.00	$263.38	$61.60	$175.31	$1,799.71
$2,400.00	$274.83	$64.28	$189.25	$1,871.64
$2,500.00	$286.29	$66.95	$203.19	$1,943.57
$2,600.00	$297.74	$69.63	$217.13	$2,015.50
$2,700.00	$309.19	$72.31	$231.08	$2,087.42
$2,800.00	$320.64	$74.99	$245.02	$2,159.35
$2,900.00	$332.09	$77.67	$258.96	$2,231.28
$3,000.00	$343.54	$80.34	$272.90	$2,303.22
$3,100.00	$354.99	$83.02	$286.84	$2,375.15
$3,200.00	$366.44	$85.70	$300.78	$2,447.08
$3,300.00	$377.90	$88.38	$314.72	$2,519.00
$3,400.00	$389.35	$91.06	$328.66	$2,590.93
$3,500.00	$400.80	$93.74	$342.60	$2,662.86
$3,600.00	$412.25	$96.41	$356.54	$2,734.80
$3,700.00	$423.70	$99.09	$370.48	$2,806.73
$3,800.00	$435.15	$101.77	$391.74	$2,871.34
$3,900.00	$446.60	$104.45	$414.97	$2,933.98
$4,000.00	$458.06	$107.13	$438.21	$2,996.60
$4,250.00	$486.68	$113.82	$496.29	$3,153.21
$4,500.00	$515.31	$120.52	$554.38	$3,309.79
$4,750.00	$543.94	$127.21	$612.46	$3,466.39
$5,000.00	$572.57	$133.91	$670.54	$3,622.98
$5,250.00	$601.20	$140.60	$728.63	$3,779.57
$5,500.00	$629.83	$147.30	$786.71	$3,936.16
$5,750.00	$658.46	$153.99	$844.80	$4,092.75
$6,000.00	$687.08	$160.69	$902.88	$4,249.35
$6,250.00	$715.71	$167.38	$960.97	$4,405.94
$6,500.00	$744.34	$174.08	$1,019.05	$4,562.53
$6,750.00	$772.97	$180.78	$1,077.14	$4,719.11
$7,000.00	$801.60	$187.47	$1,135.22	$4,875.71
$7,500.00	$858.86	$200.86	$1,251.39	$5,188.89
$8,000.00	$916.11	$214.25	$1,371.10	$5,498.54
$8,500.00	$973.37	$227.64	$1,501.21	$5,797.78
$9,000.00	$1,030.63	$241.03	$1,631.32	$6,097.02
$9,500.00	$1,054.00****	$254.42	$1,766.18	$6,425.40
$10,000.00	$1,054.00	$267.82	$1,904.30	$6,773.88
$10,500.00	$1,054.00	$281.21	$2,042.42	$7,122.37
$11,000.00	$1,054.00	$294.60	$2,180.55	$7,470.85
$11,041.82*****	$1,054.00	$295.72	$2,192.10	$7,500.00
$11,500.00	$1,054.00	$307.99	$2,318.68	$7,819.33
$12,000.00	$1,054.00	$321.38	$2,456.80	$8,167.82
$12,500.00	$1,054.00	$334.77	$2,594.93	$8,516.30
$13,000.00	$1,054.00	$348.16	$2,733.05	$8,864.79
$13,500.00	$1,054.00	$361.55	$2,871.18	$9,213.27
$14,000.00	$1,054.00	$374.94	$3,009.30	$9,561.76
$14,500.00	$1,054.00	$388.33	$3,149.06	$9,908.61
$15,000.00	$1,054.00	$401.72	$3,288.28	$10,256.00

Footnotes to Self-Employed Persons 2008 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12)) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 12.4% = $286.29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,500.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction ($5,450.00).

In calculating the annual federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of $15,000.00 times 12 months equals $180,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $12,648.00 ($102,000.00 x 12.4% = $12,648.00). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $4,820.67 ($180,000.00 x .9235 x 2.9% = $4,820.67). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals $17,468.67 ($12,648.00 + $4,820.67 = $17,468.67). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of $17,468.67 or $8,734.34.

For a single taxpayer with an adjusted gross income in excess of $159,950.00, the deduction for the personal exemption is reduced by one-third (1/3) of two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $159,950.00. The deduction for the personal exemption is no longer reduced for adjusted gross income in excess of $282,450.00. For example, monthly net earnings from self-employment of $15,000.00 times 12 months equals $180,000.00. The $180,000.00 amount is reduced by $8,734.34 (i.e., the deduction under Section 164(f) of the Code -- see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of $171,265.66. The excess over $159,950.00 is $11,315.66. $11,315.66 divided by $2,500.00 equals 4.52. The 4.52 amount is rounded up to 5. The reduction percentage is 3.33% (1/3 x 2% x 5 = 3.33%). The $3,500.00 deduction for one personal exemption is reduced by $116.67 ($3,500.00 x 3.33% = $116.67) to $3,383.33 ($3,500.00 - $116.67 = $3, 383.33). For adjusted gross income in excess of $282,450.00 the deduction for the personal exemption is $2,333.00.

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $102,000.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2008 maximum Old-Age, Survivors and

Disability Insurance tax of $12,648.00 per person (12.4% of the first $102,000.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $12,648.00). One-twelfth (1/12) of $12,648.00 equals $1,054.00.

***** This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in $7,500.00 of net resources.

* *

References Relating to Self-Employed Persons 2008 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated October 19, 2007, and appearing in 72 Fed. Reg. 60,703 (October 25, 2007)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

      (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

   (b) Tax Rate

      (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

   (a) Tax Rate Schedule for 2008 for Single Taxpayers

      (1) Revenue Procedure 2007-66, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2007-45, dated November 5, 2007

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2007-66, Section 3.11(1), which appears in Internal Revenue Bulletin 2007-45, dated November 5, 2007

(1) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2007-66, Section 3.19, which appears in Internal Revenue Bulletin 2007-45, dated November 5, 2007

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

TRD-200706326
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 12, 2007

♦ ♦ ♦

Notice Regarding Preparation of Landowner's Bill of Rights

The 2007 Legislature enacted House Bill 1495, the Landowner's Bill of Rights Act (Act), which takes effect February 1, 2008. The Act requires governmental and private entities with eminent domain authority to provide landowners affected by potential condemnation with a written statement of their rights and options as provided by law.

As required by the Act, the Office of the Attorney General (OAG) has prepared the written statement including the Landowner's Bill of Rights. The text of the proposed Landowner's Bill of Rights is published below and includes certain information as required by Texas Government Code §402.031. All comments must be received no later than January 18, 2008.

Please address comments to:

Office of the Attorney General

c/o Intergovernmental Relations Department MC-021

P.O. Box 12548

Austin, Texas 78711-2548

Comments may also be sent via e-mail to: Comments@oag.state.tx.us

The Office of the Attorney General will review any comments submitted and will publish the final document on the agency Web site (www.oag.state.tx.us) by January 31, 2008.

LANDOWNER'S BILL OF RIGHTS

1. Article 1, section 17 of the Texas Constitution guarantees Texas landowners the right to receive "adequate compensation" when their private property is taken for public use.

2. Texas private property can only be taken for a public purpose.

3. Only governmental bodies with the necessary statutory authority may take a Texas landowner's private property. Under certain circumstances, private entities are authorized to take private property under the same method afforded to the government.

4. Texas landowners have the right to receive notice when the government or any other condemning authority proposes to acquire their private property.

5. The entity proposing to acquire private property must provide property owners with an assessment of the "adequate compensation" they are due for their land.

6. The entity proposing to acquire private property must make a good faith effort to negotiate with the landowner before it files a lawsuit to condemn the land.

7. Landowners may at their own expense, consult an attorney to help them negotiate with the condemning authority.

8. Landowners may at their own expense, consult an appraiser to help them assess the value of their private property.

9. Texas landowners whose land is condemned are entitled to a hearing before a court-appointed panel that includes three special commissioners. This specialized hearing panel must fairly consider and calculate the amount of compensation that the condemning authority owes the landowner for the private property it condemned. The commissioners must also consider what compensation, if any, the landowner is due for damage to the remaining property's fair market value.

10. Texas landowners have the right to a trial, by either judge or jury, if they are unsatisfied with the compensation awarded to them by the Special Commissioners. Landowners who are dissatisfied with the trial court's judgment may file an appeal, just as they can appeal any other civil court proceeding.

CONDEMNATION PROCEDURE

"Eminent Domain" refers to the inherent right of State to take private property for a public use. Private property may only be taken by a

governmental entity or corporation that has the statutory authority to do so [also known as a "condemning authority"]. Those governmental entities with eminent domain powers include state agencies, counties, cities, school districts, and other governmental authorities and districts. The Texas Legislature has also granted eminent domain authority to certain corporations or associations organized to provide necessary public services such as common carrier pipeline companies, gas and electric corporations, telephone corporations, water and sewer service companies, and railroads. Texas statutes unique to each governmental entity or corporation provide express grants or limitations on that entity's eminent domain powers.

Under the Texas Constitution, private property may only be taken for public use. Texans' property may not be taken without a justifiable public purpose. According to Section 2206.001 of the Texas Government Code, a governmental or private entity may not take private property through the use of eminent domain if the taking is for economic development purposes, unless the economic development is a secondary purpose resulting from urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas. There are exceptions to this requirement listed in the Government Code.

Article 1, section 17 of the Texas Constitution provides that no Texan's property may be taken without the landowner being paid adequate compensation. Adequate compensation is defined by the courts and the statutes of this State to include both the market value of the property being taken and damages, if any, to the landowner's remainder property that result from the acquisition itself and the uses to be made of the condemned tract of land.

If property needs to be acquired for a public purpose, Texans have the right to be notified of the agency's interest in acquiring your property. Before a condemning authority begins negotiating with a property owner to acquire real property, the condemning authority must send this Landowner's Bill of Rights Statement by First Class Mail or otherwise to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property.

After making a determination that private property or a portion of private property is needed for a public use, a condemning authority must make a good faith effort to negotiate with Texans and reach an agreed-upon purchase price for their property. As defined by the courts and the statutes of this State, "good faith effort to negotiate" means that the condemning authority must make an offer to purchase your property that is based upon a reasonably thorough investigation and honest assessment of adequate compensation for a landowner's private property. Adequate compensation is defined as the fair market value of property acquired and damages to the remaining property, if any.

At the time the offer is made, the condemning authority must disclose any appraisal reports it has produced or acquired relating specifically to the property and that are used to determine the amount of its offer to acquire the property. The landowner is required to disclose to the condemning authority, no later than ten days prior to the Special Commissioners' hearing, any appraisal reports used to determine the landowner's opinion as to adequate compensation.

"Condemnation" is the legal process or procedure used for such a taking. Chapter 21 of the Texas Property Code governs the condemnation process. If the condemning authority is not able to agree with a property owner on a purchase price for their private property, the condemning authority is entitled to begin a condemnation proceeding by filing a petition in the proper court. The petition will be filed in the landowner's county of residence, if the landowner resides in a county in which part of the property being condemned is located. Otherwise, the petition can be filed in any county in which at least part of the property being condemned is located.

After the condemning authority files a petition and the condemnation proceeding is started, the judge of the court in which the petition is filed will appoint three disinterested landowners who live in the county where the condemnation proceeding is filed, as special commissioners to assess the amount of adequate compensation due you as a result of the condemnation of your property. After being appointed, the special commissioners must promptly schedule a hearing on the condemnation at the earliest practical time and place after they are appointed. The hearing location must be as near as practical to the property or at the county seat of the county in which the proceeding is being held. The special commissioners are required to provide the landowner no less than 11 days written notice of the time and place of the hearing. After providing notice of the hearing, the special commissioners must conduct the hearing at the scheduled time and place.

At the hearing, the special commissioners will admit evidence on the value of the property, the damages to remainder property, any value added to your remaining property as a result of the project, and the uses to be made of the property being taken. Landowners can and should consult an appraiser to help them assess the value of their private property.

After hearing evidence from all interested parties, the special commissioners will determine the amount of money to be awarded to the landowner as adequate compensation. The special commissioners will sign and file a document with the court that is called the "Award." The Award must be filed with the court no later than the next working day after the day the Award is signed. Not later than the next working day after the day the Award is filed, the clerk of the court will send written notice of the Award to all parties.

The special commissioners are allowed to adjudge the costs of the condemnation proceeding against any party. The condemning authority will be responsible for the costs if the Award is greater than the amount the condemning authority offered to pay the landowner for their property before the condemnation proceedings began, or if the special commissioners' decision is appealed and a court determines damages in an amount greater than the Award. Landowners are responsible for the costs if the Award, or the court's determination of damages, is less than or equal to the amount the condemning authority offered to them before the condemnation proceeding began.

After the Award is filed, the condemning authority may take possession of the property being condemned pending the results of further litigation if the condemning authority pays the landowner the amount awarded by the special commissioners, or deposits the amount of the Award into the registry of the court. Private property owners have the right to withdraw the deposited funds from the registry of the court.

After the Award is filed, if either the landowner or the condemning authority is dissatisfied with the amount of the Award, either party can object to the Award by filing a written statement of objections with the court. The objections must be filed on or before the first Monday following the 20th day after the Award is filed with the court. If neither party timely objects to the Award, the court will adopt the Award as the judgment of the court and issue the process necessary to enforce the judgment. If either party timely objects to the special commissioners' Award, the court will try the case in the same manner as other civil cases. You have the right to a trial by judge or jury. Either party may appeal any judgment entered by the court after the trial.

A condemning authority may file a motion to dismiss the condemnation proceeding if it decides it no longer needs your property. If the court grants the motion to dismiss, the case is over and you are entitled to recover your reasonable and necessary fees for attorneys, appraisers,

and photographers, and for the other expenses you incurred to the date of the hearing on the motion to dismiss. If a landowner files a motion to dismiss a condemnation proceeding on the grounds that the condemning authority does not have the right to condemn the property, and the court grants the landowner's motion, or otherwise renders a judgment denying the right of the condemning authority to condemn the property, the court may make an allowance to the landowner for reasonable and necessary fees for attorneys, appraisers, and photographers, and for the other expenses incurred to the date of the hearing or judgment.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200706335
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 12, 2007

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Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code §§2254.021 et seq.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2007 ("FY07") (based on actual expenditures) and 2009 ("FY09") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY09.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars ($49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 - one based on FY07 actual expenditures and one based on FY09 budgeted expenditures

* Identify the sources of financial information;

* Inventory all federal and other programs administered by the OAG;

* Classify all OAG divisions;

* Determine administrative divisions;

* Determine allocation bases for allotting services to benefitting divisions;

* Develop allocation data for each allocation base;

* Prepare allocation worksheets based upon actual FY07 expenditures and budgeted FY09 expenditures;

* Summarize costs by benefitting division;

* Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

* Determine indirect cost rates throughout the OAG on an annual basis;

* Prepare and present draft Indirect Cost Plans to the OAG by April 10, 2008;

* Formalize the Actual FY07 and Budgeted FY09 Indirect Cost Plans and present them to HHS by April 30, 2008; and

* Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2008.

2. Develop standardized billing rates for legal services

* Review current criteria used by the OAG for charging various agencies;

* Determine the types of legal services provided to the agencies;

* Compile direct hours for each type of service;

* Determine effort reporting requirements;

* Re-examine billing rate options;

* Determine the actual cost of services;

* Analyze and confirm revenues and cost analyses;

* Prepare and present a draft Legal Services Billing Schedule for FY 2007 actual costs and FY 2009 budgeted costs to the OAG by July 31, 2008;

* Formalize a Legal Services Billing Schedule by August 31, 2008.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required timeframes specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 22, 2008. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2254.028, the OAG anticipates entering into the resultant contract on or about February 11, 2008.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);

2. the date(s) the employment(s) terminated; and

3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.

3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or in-

directly its response to any competitor or any other person engaged in such line or business.

10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. consultant must answer the following questions:

* If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

* If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

* If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

* Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 15, 2008 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request

for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

Phone: (512) 475-4495

TRD-200706225
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 10, 2007

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Brazos Valley Council of Governments

Invitation for Bids--Gasoline Assistance Program

On December 12, 2007, Policy Studies, Inc. will release an Invitation for Bids for a Gasoline Assistance Program. The goal of this program is to provide gasoline assistance through the use of a gas card system for eligible customers that are abuse proof and easily tracked in its distribution, usage, and reconciliation. The area served by this gasoline assistance program covers the local workforce area counties of Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. An original and two copies of a written bid are due to PSI's office at 3991 E. 29th Street in Bryan no later than 4:00 p.m. on December 28, 2007. There will not be a bidder's conference for this procurement but questions will be taken in writing to wknight@bvcog.org until noon on December 19, 2007. The answers will be posted on www.bvjobs.org by noon on December 21, 2007. The contact person for this is Wendy Knight, (979) 595-2801.

Organization: Workforce Solutions Brazos Valley

Contact: Wendy Knight

Address: 3991 East 29th Street, P.O. Drawer 4128

City: Bryan

State: Texas

Zip: 77805

InternetURL: www.bvjobs.org

Email: wknight@bvcog.org

Phone: (979) 595-2801

Fax: (979) 595-2812

Posted: December, 12, 2007

Expires: December 28, 2007

TRD-200706212
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: December 7, 2007

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 30, 2007, through December 6, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 12, 2007. The public comment period for this project will close at 5:00 p.m. on January 11, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: City of Port Aransas; Location: The project is located along a 7-mile stretch of the Gulf of Mexico at Port Aransas Beach, within the City of Port Aransas, Nueces County, Texas. The project area begins at the southern city limits and extends north to Lantana Drive. The project can be located on the U.S.G.S. quadrangle map entitled: PORT ARANSAS, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; from Easting: 685,521; Northing: 3,070,683 to Easting: 691,676; Northing: 3,079,308. Project Description: The applicant proposes to conduct beach maintenance activities associated with beach grooming and the periodic removal of sargassum and non-natural items (such as lumber, plastic bottles, etc.) from the public beach in the following manner: 1) Removal of all non-natural material such as lumber, plastic bottles, cans, etc. from the beach to an off-site sanitary landfill; 2) Movement of sand from above the annual high tide line (HTL) with subsequent placement on the beach between HTL and the mean high tide line (MTL). This activity can be described as beach grooming and is conducted to preserve the aesthetics of the beach; 3) Repositioning of sand from the toe of the dune line to just above HTL for beach roadway maintenance; 4) Repositioning of sand/sargassum from areas of the beach located between HTL to

below MTL and subsequent placement of this material into beach maintenance storage areas located within foredunes above HTL. The Texas General Land Office (GLO) issues leases and easements for structures and activities located in the foredune area. Once the sargassum material degrades, it is subsequently removed from GLO beach maintenance storage areas and placed in the surf just below MTL. The sand and degraded sargassum is allowed to redistribute naturally along the shoreline. Sargassum can be placed in three locations within the GLO beach maintenance storage area: a) Front-stacking of small piles consisting of sand/sargassum above HTL at the base of the foredune on accreting beaches only; b) Mid-stacking of small piles consisting of sand/sargassum within troughs behind the foredune on all beaches; c) Back-stacking of small piles consisting of sand /sargassum in back of the main dune line on all beaches; and 5) Conducting leveling of the beach, sand placement, and sargassum collection below MTL. CCC Project No.: 08-0039-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-1847 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Subsea LLC; Location: The project is located north of and parallel to Seawolf Parkway on Pelican Island and in the Galveston Ship Channel, adjacent to Galveston Bay, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the Pipe Fabrication Plant are: Zone 15; Easting: 324492; Northing: 3244966. Project Description: In December 2003, Individual Permit 23017 was issued to Subsea 7 LLC for the purpose of constructing a pipe fabrication plant on Pelican Island in Galveston County, Texas. The permit authorized the placement of 7,630 cubic yards of fill material and concrete into 5.05 acres of jurisdictional adjacent freshwater wetlands and the placement of pilings within 0.02 acres of jurisdictional waters. The permit also authorized the hydraulic dredging to 30 feet below mean sea level (4,500 cubic yards of material) of 0.79 acres of waters within the Galveston Ship Channel for the construction of a loading dock. The permit expires on 31 December 2009. The project and mitigation have not been initiated to date. Since the permit authorization, the permittee has replaced the ship used to transport the material worldwide with a larger, longer ship which can transport more pipe. Therefore, more on-site capacity of pipe is needed. The applicant is requesting an amendment to Permit 23017 to allow the placement of fill into an additional 0.54 acre of jurisdictional wetlands located within the 1,300 foot pipe storage area (5.05 acres authorized + 0.54 acre proposed = 5.59 acres total). The applicant proposes to place pilings within an additional 0.003 acre of waters (0.02 acre previous + 0.003 acre proposed = 0.023 acre total). Lastly, the applicant proposes to dredge a total of 45,000 cubic yards of material from 2.31 acres of waters (0.79 authorized + 1.52 acre proposed additional dredge = 2.31 acres total). To compensate for the impacts to 5.59 acres of freshwater, non-tidal wetlands the applicant proposes to purchase 5.59 credits form the Katy Cypress Wetland Mitigation Bank. The applicant's plans are enclosed in 11 sheets. CCC Project No.: 08-0041-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-936 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200706300
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 11, 2007

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Notice of Texas Coastal Impact Assistance Plan

Pursuant to Section 1356a(c)(1)(B) of the Energy Policy Act of 2005, the Governor of Texas must solicit local input and provide for public participation in the development of the Texas Coastal Impact Assistance Plan. Notice is thereby given that the Texas General Land Office, on behalf of the Office of the Governor, is soliciting public comment regarding the Plan. All comments must be submitted by January 21, 2008. A copy of the Plan and comment submission directions may be found at http://www.glo.state.tx.us/coastal/ciap/ciap2005.html.

For more information on this matter, contact Kathy Smartt, Coastal Resources Division, Texas General Land Office, (512) 475-1552.

TRD-200706279
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 11, 2007

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective January 1, 2008

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective January 1, 2008 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Benjamin (Knox Co)	2138032	.015000	.077500

A 1/4 percent special purpose district sales and use tax will become effective January 1, 2008 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Bangs Municipal Development District	5025500	.002500	SEE NOTE 1
NASA Area Management District	5101641	.002500	SEE NOTE 2

A 1 1/2 percent special purpose district sales and use tax will become effective January 1, 2008 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Cibolo Canyons Special Improvement District	5015557	.015000	SEE NOTE 3

NOTE 1: The Bangs Municipal Development District is located in the east-central portion of Brown County. The Bangs Municipal Development District has the same boundaries as the Bangs Extra-Territorial Jurisdiction, which includes the city of Bangs. The Bangs Municipal Development District is located entirely within the 78623 ZIP Code. Contact the district representative at (325) 752-6223 for additional boundary information.

NOTE 2: The NASA Area Management District is located entirely within the city of Nassau Bay which has a city sales and use tax. The boundaries of the district are not the same as the city of Nassau Bay. Contact the district representative at (281) 333-4211 for additional boundary information.

NOTE 3: The Cibolo Canyons Special Improvement District is located in the northern portion of Bexar County. The district is located entirely within the San Antonio MTA, which has a transit sales and use tax, but the district does not include any area within the city of San Antonio. The unincorporated area of Bexar County in ZIP Codes 78259 and 78261 are partially located within the Cibolo Canyons Special Improvement District. Contact the district representative at (210) 442-2324 for additional boundary information.

TRD-200706158
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: December 6, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/17/07 - 12/23/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/17/07 - 12/23/07 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200706287

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 11, 2007

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Employees Retirement System of Texas

Request for Proposals

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposals ("RFP") seeking a qualified vendor to provide claims administrative services for a flexible benefits program under the Texas Employees Group Benefits Program ("GBP"), beginning September 1, 2008 through August 31, 2011. The solicitation of proposals is conducted in accordance with the document title "Employees Retirement System of Texas Request for Proposal to Provide Administrative Services for a Flexible Benefits Program." The selected Flexible Spending Account Administrator ("FSA Administrator") shall provide the level of benefits required in the RFP and meet other requirements that are in the best interest of the GBP participants and ERS, and shall be required to execute a Contractual Agreement ("Contract") and Business Associate Agreement ("BAA") provided by and satisfactory to ERS relating to the services to be provided. The Contractual Agreement is a separate document from the RFP and shall be appropriately executed, with all required exhibits completed and attached, without amendment or revision, by a duly authorized officer of the FSA Administrator and returned with the RFP response.

An FSA Administrator wishing to respond to the RFP shall submit a response in accordance with the requirements of the RFP and shall meet at least all of the following minimum requirements: (1) provide electronic debit card services to at least one (1) client for a minimum of three (3) years to a minimum of 15,000 active debit card participants; (2) provide claims administrative services to a flexible benefits program for at least three (3) years to organizations with no less than 75,000 eligible employees, or in aggregate, 1,000,000 participants for three (3) years; (3) have a current net worth of $10 million dollars with $5 million in cash and cash equivalents as evidenced by a 2006 audited financial statement; and (4) maintain its principal place of business in the United States of America and have a current valid certificate of authority to transact business in the state of Texas from the Secretary of State since at least January 31, 2008.

The RFP will be available on or after December 21, 2007, from ERS' web site (www.ers.state.tx.us). To access the secured portion of the RFP web site, interested FSA Administrators must e-mail their request to: ivendorquestions@ers.state.tx.us. The e-mail request must include the FSA Administrator's full legal name, street address, as well as phone and fax numbers, and e-mail address for the organization's direct point of contact. Upon receipt of your e-mailed request, a user ID and password will be issued to the requesting FSA Administrator that will permit access to the secured RFP. General questions concerning the RFP may be e-mailed to: ivendorquestions@ers.state.tx.us. Inquiries and responses, if applicable, are updated frequently. The RFP will be discussed at a mandatory FSA web conference on January 23, 2008, beginning at 2:00 p.m. (CST). FSA Administrators are required to register for participation in the web conference no later than the close of business on January 18, 2008, by e-mailing as provided above.

To be eligible for consideration, an FSA Administrator is required to submit a total of five (5) proposals. One (1) marked as "Original" with the fully executed Contractual Agreement and BAA, both signed in blue ink, and without amendment or revision with all required completed exhibits attached and an additional two (2) identical copies of the proposal, including all required exhibits shall be provided in printed and bound format. The remaining two (2) copies shall be submitted in CD-ROM format using Word or Excel applications (no information submitted in PDF format will be accepted). All materials shall be executed as noted above and shall be received by ERS by 12:00 Noon (CST) on February 8, 2008.

ERS will base its evaluation and selection of an FSA Administrator on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, ability to meet minimum requirements and preferred standards, operating requirements, references, experience serving large group programs, past experience, administrative quality, program fees, amount allocated for performance guarantees, and other relevant criteria. Each proposal will be evaluated both individually and relative to the proposal of other qualified FSA Administrators. Complete specifications will be included with the RFP.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interest of ERS, the GBP, its participants or the state of Texas. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFP and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP, its participants or the state of Texas.

TRD-200706327
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: December 12, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 22, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each

AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 22, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Arash The Archer Corporation dba Corner Food Store; DOCKET NUMBER: 2007-1239-PST-E; IDENTIFIER: RN102042728; LOCATION: League City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.246(1), (3) - (6) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II Vapor Recovery System (VRS); 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II VRS to onboard refueling vapor recovery (ORVR) compatible systems; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a delivery certificate by timely and proper submission of a completed underground storage tank (UST) registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; PENALTY: $4,600; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: A R H Enterprises, Inc. dba R H Food Mart; DOCKET NUMBER: 2007-1261-PST-E; IDENTIFIER: RN102455748; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to conduct proper release detection for the product piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and each current employee receives in-house Stage II VRS training; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to ORVR compatible systems; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instruction conspicuously on the front of each gasoline dispensing pump; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $8,300; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Steve Williams dba Axis Demolition and Excavating; DOCKET NUMBER: 2007-1332-MSW-E; IDENTIFIER: RN105229793; LOCATION: Victoria County, Texas; TYPE OF FACILITY: construction and demolition business; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); and 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge; PENALTY: $8,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Barker Development Company, LLC; DOCKET NUMBER: 2007-1055-WQ-E; IDENTIFIER: RN105232524; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: construction site for single family housing development; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to develop and implement a storm water pollution prevention plan and obtain permit coverage to discharge storm water at a construction site; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: CCRS-Consolidated Construction Recycling Services, Ltd.; DOCKET NUMBER: 2007-0858-MSW-E; IDENTIFIER: RN104809595; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: MSW recycling; RULE VIOLATED: 30 TAC §328.4(a) and §328.5(a), by failing to prevent the operating of an unauthorized recycling facility; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-1419-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 22690, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b) and THSC, §382.085(b), by failing to submit a timely final report for an emissions event; PENALTY: $10,234; Supplemental Environmental Project (SEP) offset amount of $4,094 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Clint Independent School District; DOCKET NUMBER: 2007-1327-MWD-E; IDENTIFIER: RN101521169; LOCATION: El Paso County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014005001, Effluent Limitations and Monitoring Requirements A, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for biochemical oxygen demand (BOD); PENALTY: $2,040; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2007-0670-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 5920A and PSD-TX-103M3, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.615(2), Air Permit Number 75864, Permit Representations, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(G) and (H) and THSC, §382.085(b), by failing to properly notify the TCEQ of emissions events; and 30 TAC §116.115(c), Air Permit Number 49140, SC Number 12, and THSC, §382.085(b), by failing to comply with the permitted emission rate of 2.44 pounds (lbs) of particulate matter (PM) per 1,000 lbs of coke burn-off; PENALTY: $325,120; Supplemental Environmental Project (SEP) offset amount of $162,560 applied to Houston-Galveston

AERCO?s Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Custom Crushed Stone, Inc.; DOCKET NUMBER: 2007-1305-WQ-E; IDENTIFIER: RN105282172; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: rock crushing quarry; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: George Ted Devries dba Devries Dairy; DOCKET NUMBER: 2007-1572-AGR-E; IDENTIFIER: RN100802917; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: commercial dairy; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $5,200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Doggett Heavy Machinery Services, Ltd; DOCKET NUMBER: 2007-1922-PST-E; IDENTIFIER: RN102847365; LOCATION: Hidalgo County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: David Griffith dba East Texas Core Suppliers; DOCKET NUMBER: 2007-1589-MSW-E; IDENTIFIER: RN105273726; LOCATION: Nacogdoches County, Texas; TYPE OF FACILITY: small core return business; RULE VIOLATED: 30 TAC §324.4(2)(B), by failing to prevent the discharge of used oil on the ground; PENALTY: $500; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77702-1892, (409) 898-3838.

(13) COMPANY: E.I. du Pont de Nemours and Company; DOCKET NUMBER: 2007-1435-IWD-E; IDENTIFIER: RN100225085; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: industrial wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0000474000, Effluent Limitations and Monitoring Requirements Number 1 for Outfalls 001 and 101, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for five-day biochemical oxygen demand (BOD_5), ammonia nitrogen (NH_3-N), and total Kjeldahl nitrogen; PENALTY: $20,400; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-0938-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Permit Number 18978/PSD-TX-752M3, SC Number 1, and THSC, §382.085(b), by failing to control unauthorized emissions on December 13, 2005; and 30 TAC §115.722(c)(1) and §116.115(c), Permit Number 4477, SC Number 1, and THSC, §382.085(b), by failing to control unauthorized emissions on March 4, 2006; PENALTY: $50,000; Supplemental Environmental Project (SEP) offset amount of $25,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2007-1403-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 18287, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; Supplemental Environmental Project (SEP) offset amount of $5,000 applied to Houston-Galveston AERCO?s Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: F&K Face, L.P.; DOCKET NUMBER: 2007-1310-WQ-E; IDENTIFIER: RN105119390; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR150000, Part III, Section F.2(a) and F.7, and the Code, §26.121(a), by failing to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state; and 30 TAC §281.25(a)(4), TPDES General Permit Number TXR150000, Part III., Section F.8(d), by failing to document incidents of noncompliance in the storm water inspection report; PENALTY: $5,202; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2007-1227-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: synthetic chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Number 19168, SC Number 1, and THSC, §382.085(b), by failing to comply with the maximum allowable emission rate table (MAERT) for PM; PENALTY: $12,350; Supplemental Environmental Project (SEP) offset amount of $4,940 applied to City of Point Comfort Wastewater Treatment Plant Repair; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78233-4480, (361) 825-3100.

(18) COMPANY: Gregory Alan Lewis dba GAL Horticulture Service; DOCKET NUMBER: 2007-1383-LII-E; IDENTIFIER: RN105271720; LOCATION: Jacksboro, Jack County, Texas; TYPE OF FACILITY: horticulture and irrigation installation and repair business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to advertising, selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system; and 30 TAC §30.5(b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to advertising services for which an irrigator license is required; PENALTY: $875; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19) COMPANY: Georgia-Pacific Chemicals LLC; DOCKET NUMBER: 2007-1415-AIR-E; IDENTIFIER: RN101896439; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: resin manufacturing company; RULE VIOLATED: 30 TAC §113.120 and §122.143(4), 40 CFR §63.120(d)(G), Permit Number 01140, General Terms and Conditions and SC Number 1A, and THSC, §382.085(b), by failing to maintain a maximum temperature of 50 degrees Fahrenheit for methanol storage tank equipment; and 30 TAC §§116.615(2)

and (9), 116.617, and 122.143(4), Permit Number 01140, General Terms and Conditions and SC Number 8, and THSC, §382.085(b), by failing to operate the thermal oxidizer while cleaning a formaldehyde tanker truck from 1,000 hours to 1,015 hours; PENALTY: $4,690; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Gruene Rapids Condominiums, LLC; DOCKET NUMBER: 2007-1258-EAQ-E; IDENTIFIER: RN105225932; LOCATION: Comal County, Texas; TYPE OF FACILITY: construction activities for a proposed multi-family residential project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Water Pollution Abatement Plan; PENALTY: $25,500; ENFORCEMENT COORDINATOR: Samuel Short, (361) 825-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: H H Farms LLC; DOCKET NUMBER: 2007-1909-PST-E; IDENTIFIER: RN101693885; LOCATION: Hale County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(22) COMPANY: Syed N. Hyder; DOCKET NUMBER: 2007-1408-MWD-E; IDENTIFIER: RN102097789; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a) and TPDES Permit Number WQ0011778001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge and accumulation of sewage sludge and grease; PENALTY: $41,800; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: ICON BUILDERS, L.L.C. dba Cypresswood Crossing Apartments and Offsite Utilities; DOCKET NUMBER: 2007-1916-WQ-E; IDENTIFIER: RN105338115; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: management office; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Jerry L. McClung dba J L Backhoe Service; DOCKET NUMBER: 2007-1763-SLG-E; IDENTIFIER: RN102911708; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: septic tank waste transporter operation; RULE VIOLATED: 30 TAC §312.143, by failing to deposit wastes at an authorized facility; PENALTY: $650; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Ben Kahlig; DOCKET NUMBER: 2007-1412-PST-E; IDENTIFIER: RN104590450; LOCATION: Lott, Falls County, Texas; TYPE OF FACILITY: property with inactive USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $4,750; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: La Noria Convenience Store, Inc.; DOCKET NUMBER: 2007-1904-PST-E; IDENTIFIER: RN101433969; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 707 East Carlton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(27) COMPANY: George Stebens, Jr. dba Little Creek Acres Water System; DOCKET NUMBER: 2007-1467-PWS-E; IDENTIFIER: RN101233757; LOCATION: Quinlan, Hunt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification; and 30 TAC §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system; PENALTY: $530; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Matagorda Waste Disposal and Water Supply Corporation; DOCKET NUMBER: 2007-1124-PWS-E; IDENTIFIER: RN101454627; LOCATION: Matagorda, Matagorda County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: $780; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Motiva Enterprises, LLC; DOCKET NUMBER: 2006-1513-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b), by failing to obtain authorization for carbon monoxide (CO) emissions; 30 TAC §116.715(a) and (c)(7) and §122.143(4), Air Permit Number 8404, SC 9, and THSC, §382.085(b), by failing to comply with the permitted MAERT limits by emitting 15.82 tons of PM and 4.8215 tons of volatile organic compounds; 30 TAC §116.715(a) and §122.143(4), Air Permit Number 8404, SC 6F, Federal Operating Permit (FOP) Number O-01386, General Terms and Conditions and SC 16A, and THSC, §382.085(b), by failing to paint completely white the uninsulated tank exterior surfaces exposed to the sun; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O-01386, General Terms and Conditions, and THSC, §382.085(b), by failing to timely report 12 deviations; 30 TAC §106.454(1)(C), (E), and (2)(A), and §122.143(4), FOP Number O-01386, General Terms and Conditions and SC 17, and THSC, §382.085(b), by failing to properly operate facility degreasing unit; 30 TAC §115.356(2)(E)(v) and §122.143(4), FOP Number O-01386, General Terms and Conditions and SC 1A, and THSC, §382.085(b), by failing to maintain a record of the repair monitoring for a leaking flange on a gasoline blender; 30 TAC §§101.20(1), 133.340, 116.715(a), and 122.143(40), 40 CFR §60.592(a), Air Permit Number 8404, SCs 10E, 11E, 14, 16, 20, 23, 38, and 56, FOP Number O-01386, SCs 1A and 16A, and THSC, §382.085(b), by failing to equip the end of 67 open-ended lines with a cap, plug, blind flange, or second valve; 30 TAC §116.715(a) and §122.143(4), Air Permit Number 8404, SC 79, FOP O-01386, SC 16A, and THSC, §382.085(b), by failing to conduct daily hand gauging and hydrocarbon checks via tricocks once per shift; and 30 TAC §§101.20(1), 113.340, and 122.143(4), 40 CFR §60.592(e), FOP O-01386, General Terms and Conditions and SC 1A, and THSC, §382.085(b), by failing to maintain a record of fugitive monitoring components; PENALTY: $286,440; Supplemental Environmental Project (SEP) offset amount of $143,220 applied to Jefferson County-Southeast Texas Regional Air Monitoring

Network; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Opti-Blast, Inc.; DOCKET NUMBER: 2007-0507-IHW-E; IDENTIFIER: RN102157856; LOCATION: Jacksonville, Cherokee County, Texas; TYPE OF FACILITY: plastic bead blast manufacturer; RULE VIOLATED: 30 TAC §§335.2(a), 335.17(a)(8), and 335.24(h), by failing to obtain a permit to store and treat municipal hazardous and industrial solid waste; 30 TAC §335.4, by failing to prevent spills, discharges, and disposal of industrial solid waste; 30 TAC §335.62 and 40 CFR §262.11(a), by failing to conduct hazardous waste determinations; 30 TAC §335.9(a)(1)(A), by failing to maintain records of hazardous and industrial solid waste activities; 30 TAC §335.6(c), by failing to notify the executive director of regulated waste activities; and 30 TAC §335.69(a)(4)(A) and 40 CFR §265.16(a)(1), by failing to have personnel who had successfully completed a program of classroom instruction or on-the-job training to ensure the proper management of hazardous waste; PENALTY: $63,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(31) COMPANY: City of Paducah; DOCKET NUMBER: 2007-0927-PWS-E; IDENTIFIER: RN101385029; LOCATION: Cottle County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; 30 TAC §290.46(j), by failing to perform customer service inspections; 30 TAC §290.44(h)(4), by failing to install a backflow prevention assembly; 30 TAC §290.41(c)(3)(N), by failing to provide flow meters on the well discharge lines; 30 TAC §290.42(i), by failing to compile a thorough plant operations manual and keep it up-to-date for operator review and reference; and 30 TAC §290.43(c)(2), (3), (6), and (8), by failing to maintain, design, fabricate, erect, test, and disinfect all facilities for potable water storage in strict accordance with American Water Works Association standards; PENALTY: $3,097; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(32) COMPANY: Parkway Construction and Associates LP; DOCKET NUMBER: 2007-1923-WQ-E; IDENTIFIER: RN105241616; LOCATION: Lamb County, Texas; TYPE OF FACILITY: construction business; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(33) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 401; DOCKET NUMBER: 2007-1447-PST-E; IDENTIFIER: RN102064698; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to ORVR compatible systems; 30 TAC §115.245(2) and THSC, §382.085(b), by failing successfully complete annual and triennial Stage II testing; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $4,150; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: City of San Juan; DOCKET NUMBER: 2007-1439-MLM-E; IDENTIFIER: RN103003364; LOCATION: San Juan, Hidalgo County, Texas; TYPE OF FACILITY: air curtain incinerator; RULE VIOLATED: 30 TAC §106.496(a), (d)(4), and (g)(4)(A)(ii) (formerly 30 TAC §106.496(9), (17), and (2)), and THSC, §382.085(b), by failing to meet the conditions and requirements for authorized use of an air curtain incinerator; 30 TAC §106.496(c)(3)(C), (E), and (F) (formerly 30 TAC §106.496(13), (6), and (9)), and THSC, §382.085(b), by failing to properly conduct daily operations; 30 TAC §106.496(h)(4)(C) (formerly 30 TAC §106.496(13)), and THSC, §382.085(b), by failing to post operating instructions at the burn site and make the instructions available at the request of TCEQ personnel; and 30 TAC §330.15(c), by failing to dispose of MSW at an authorized facility; PENALTY: $3,600; Supplemental Environmental Project (SEP) offset amount of $2,880 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(35) COMPANY: Sanya Investments, Inc. dba Fina Food Mart; DOCKET NUMBER: 2007-1304-PST-E; IDENTIFIER: RN101642759; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the UST system; 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding USTs; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate areas of the fill tube; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II VRS; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative receives training and instruction in the operation and maintenance of the Stage II VRS and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the Stage II equipment; 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to update the Stage II VRS to ORVR compatible system; PENALTY: $13,175; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: City of Shepherd; DOCKET NUMBER: 2007-1463-MWD-E; IDENTIFIER: RN101916666; LOCATION: Shepherd, San Jacinto County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 11380001, Final Effluent Limitations and Monitoring Requirements Number 4, and the Code, §26.121(a), by failing to prevent the discharge of floating solids; 30 TAC §305.125(1) and (5) and §317.3(c)(2), and TPDES Permit Number 1138001, Operational Requirements Number 1, by failing to maintain a firm pumping capacity; 30 TAC §305.125(1) and (5) and §317.3(e)(4)(C), and TPDES Permit Number 11380001, Operational Requirements Number 1, by failing to operate and maintain the 59 North Lift Station; and 30 TAC §305.125(1) and (5) and §317.3(e)(5), and TPDES Permit Number 1138001, Operational Requirement Number 1, by failing to maintain the high level alarm light at the wastewater treatment plant lift station; PENALTY: $8,600; Supplemental Environmental Project (SEP) offset amount of $6,880 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") -

Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: Signal International Texas, L.P.; DOCKET NUMBER: 2007-1428-AIR-E; IDENTIFIER: RN102514841; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: offshore oil rig repair plant; RULE VIOLATED: 30 TAC §115.247(2) and §122.143(4), FOP Number O-1355, General Terms and Conditions, and THSC, §382.085(b), by failing to comply with annual gasoline throughput reporting requirements; 30 TAC §122.143(4) and §122.145(2)(A) and (B), FOP Number O-1355, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviation to the executive director; and 30 TAC §122.143(4) and §122.146(1) and (5)(D), FOP Number O-1355, General Terms and Conditions, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of the FOP for at least each 12-month period; PENALTY: $8,600; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(38) COMPANY: S.L.C. Water Supply Corporation; DOCKET NUMBER: 2007-1275-PWS-E; IDENTIFIER: RN101265908; LOCATION: Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(6)(A), Agreed Order Docket Number 2005-0108-PWS-E, Ordering Provision 2.a.i., and THSC, §341.033(a), by failing to employ at least one operator who holds a valid Class B or higher surface water license; 30 TAC §290.42(d)(2)(E), by failing to provide an appropriate air gap on the filter-to-waste line; 30 TAC §290.42(d)(11)(E)(ii), by failing to equip each filter at the surface water treatment facility with an on-line turbidimeter and recorder; 30 TAC §290.44(d)(1), by failing to properly screen all air release devices within the distribution system; 30 TAC §290.46(m), by failing to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.42(d)(11)(D)(i), by failing to equip each filter with a manually adjustable rate-of-flow controller; 30 TAC §290.43(c)(6), by failing to maintain the system?s clearwell tight against leakage; and 30 TAC §290.43(c)(2), by failing to provide a properly sealed roof hatch on the clearwell; PENALTY: $5,182; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(39) COMPANY: Southwest Convenience Stores, LLC dba 7-Eleven; DOCKET NUMBER: 2007-1181-AIR-E; IDENTIFIER: RN102056538, RN102028636, RN102056835, RN102048048, RN102044005, RN102028883, RN102017514, RN102011822, RN102048030, RN102011277, RN100826262, RN102384666, RN102395274, RN102388816, and RN100825728; LOCATION: Socorro, El Paso, and Clint; El Paso County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure requirement of seven psi absolute; PENALTY: $21,240; Supplemental Environmental Project (SEP) offset amount of $8,496 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(40) COMPANY: Southwest Convenience Stores, LLC dba 7-Eleven; DOCKET NUMBER: 2007-1268-AIR-E; IDENTIFIER: RN102006459, RN102061124, RN102017068, RN102032422, RN102033800, RN102023058, RN102024072, RN102039070, RN102043999, RN102061140, RN102384260, RN102390028, RN102397189, RN102387024, RN102389228, and RN100942085; LOCATION: Anthony, El Paso, and Fabens; El Paso County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum Reid vapor pressure requirement of seven psi absolute; PENALTY: $17,450; Supplemental Environmental Project (SEP) offset amount of $6,980 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(41) COMPANY: Southwest Nut Company; DOCKET NUMBER: 2007-0924-IWD-E; IDENTIFIER: RN102924529; LOCATION: Fabens, El Paso County, Texas; TYPE OF FACILITY: nut and nut products manufacturing; RULE VIOLATED: the Code, §7.101 and §26.121(a)(1) and Agreed Order Docket Number 2003-0365-IWD-E, Ordering Provisions 2.a. through 2.c.; by failing to prevent the unauthorized discharge of industrial wastewater; PENALTY: $18,300; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(42) COMPANY: Stewart & Stevenson Tactical Vehicle Systems, LP; DOCKET NUMBER: 2007-1329-IWD-E; IDENTIFIER: RN102343944; LOCATION: Sealy, Austin County, Texas; TYPE OF FACILITY: medium tactical vehicle manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0002462000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 001A, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for Flow and pH; 30 TAC §305.125(1), TPDES Permit Number WQ0002462000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 201A, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids (TSS) and total zinc; 30 TAC 305.125(1), TPDES Permit Number WQ0002462000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall 301A, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for TSS, total chlorine, and BOD_5, and 30 TAC §305.125(1) and TPDES Permit Number WQ0002462000, Permit Self-Reporting Requirements, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $27,140; Supplemental Environmental Project (SEP) offset amount of $10,856 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(43) COMPANY: Texas-American Water Company; DOCKET NUMBER: 2007-1356-PWS-E; IDENTIFIER: RN101281103; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $372; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2007-1892-PST-E; IDENTIFIER: RN101813533; LOCATION: Ralls, Crosby County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL

OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(45) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-1141-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c) and §117.206(e)(1)(B) (now 30 TAC §117.310(c)(1)), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to comply with emission limits for nitrogen oxides and CO; 30 TAC §117.520(c)(2)(C)(i) (now 30 TAC §117.9020(2)(C)(i)), and THSC, §382.085(b), by failing to submit the reference method stack test report; and 30 TAC §116.115(c), Air Permit Number 46307, SC Number 1, and THSC, §382.085(b), by failing to comply with the 0.24 lbs per hour CO emissions limits; PENALTY: $30,125; Supplemental Environmental Project (SEP) offset amount of $12,050 applied to Houston-Galveston AERCO?s Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(46) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2007-1367-AIR-E; IDENTIFIER: RN100909373; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5264, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,050; Supplemental Environmental Project (SEP) offset amount of $2,820 applied to Houston-Galveston AERCO?s Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(47) COMPANY: Gary Valdez; DOCKET NUMBER: 2007-1893-WOC-E; IDENTIFIER: RN105233670; LOCATION: Friendswood, Harris County, Texas; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(48) COMPANY: Victoria County Water Control and Improvement District No. 1; DOCKET NUMBER: 2007-1375-MWD-E; IDENTIFIER: RN101516714; LOCATION: Bloomington, Victoria County, Texas; TYPE OF FACILITY: wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010513002, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permitted effluent limits for flow, dissolved oxygen, and TSS; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010513002, Monitoring and Reporting Requirements Number 1, by failing to submit the monitoring results at the intervals specified in the permit; PENALTY: $8,280; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(49) COMPANY: Cities of Waco, Woodway, Bellmead, Lacy Lakeview, Robinson, and Hewitt; DOCKET NUMBER: 2007-1174-MWD-E; IDENTIFIER: RN102097235; LOCATION: McLennan County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(4), TPDES Permit Number WQ0011071001, Monitoring and Reporting Requirements Number 7.a., by failing to prevent an unauthorized discharge of wastewater; 30 TAC §305.125(9)(A) and TPDES Permit Number WQ0011071001, Permit Condition 2.g., and the Code, §26.121(a), by failing to orally notify the TCEQ Waco Regional Office within 24 hours of becoming aware of an unauthorized discharge; and 30 TAC §305.125(4), TPDES Permit Number WQ0011071001, Permit Condition 2.g., and the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater; PENALTY: $54,720; Supplemental Environmental Project (SEP) offset amount of $54,720 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(50) COMPANY: Wharton County Power Partners, L.P.; DOCKET NUMBER: 2007-1478-AIR-E; IDENTIFIER: RN101527943; LOCATION: Boling, Wharton County, Texas; TYPE OF FACILITY: fossil fuel electric power generator plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-00086, General Terms and Conditions, and THSC, §382.085(b), by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O-00086, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations in writing to the executive director for each six-month period after the issuance of a permit no later than 30 days after the end of each reporting period; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200706295
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2007

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Notice of Availability of the Draft 2008 Clean Water Act, §305(b) Water Quality Inventory and the §303(d) List

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the Draft 2008 Clean Water Act (CWA), §305(b) Water Quality Inventory and the §303(d) List. The report is an overview of the status of surface waters in the state, including concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their possible sources. In addition, a draft summary is provided of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The report is used by TCEQ for management decisions including monitoring, planning, implementing, and funding best management practices to control pollution sources, and to develop a list of impaired waters for selecting water bodies for which total maximum daily load analyses will be initiated.

For the 2008 list, TCEQ conducted a water quality assessment of all classified segments, other segments with a pending regulatory reason for evaluation or the need to initiate or revise planning activities. TCEQ is requesting cooperators, such as local, state, or federal agencies, members of the general public, or academic institutions to provide data or information that indicates water quality problems that may change the standards attainment status of other segments.

The report will be available December 21, 2007 on the TCEQ Web site at: *http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/06twqi/twqi08.html*. Information regarding the public comment period may also be found on the Web site above. Review and comment on individual water bodies and the summaries, as described on the Web site, are encouraged through January 22, 2008.

Any data and information provided to TCEQ to refute or substantiate current assessments must be submitted in summary format, col-

lected using approved TCEQ methods and materials, and consistent with TCEQ quality assurance requirements.

After the public comment period, TCEQ will evaluate all additional data or information received. If any additional data or information submitted influences the draft inventory, this will be reflected in the final Draft 2008 Water Quality Inventory and the §303(d) List submitted to the Environmental Protection Agency for approval.

TCEQ will consider and respond to comments received on this draft during the comment period, in a "Response to Comments" document. This document will be posted on the Web site with the Draft 2008 Water Quality Inventory and the §303(d) List after the close of the comment period. It is not necessary to re-submit comments sent to the TCEQ previously. **Comments must be received by 5:00 p.m. on January 22, 2008.** Information must be submitted in writing and cannot be accepted by phone.

Individuals unable to access documents on the TCEQ Web site may contact Patrick Roques, Texas Commission on Environmental Quality, Monitoring Operations Division, MC 165, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200706185
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 7, 2007

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Notice of District Petition

Notices issued November 15, 2007 through November 30, 2007.

TCEQ Internal Control No. 06192007-D02; White Rock Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert White Rock Water Supply Corporation to White Rock Special Utility District (District), to transfer Certificate of Convenience and Necessity (CCN) No. 12547 from White Rock Water Supply Corporation to White Rock Special Utility District. White Rock Special Utility District's business address will be: 841 LCR 463, Mexia, Texas 76667. The petition was filed pursuant to Chapters 49 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of White Rock Water Supply Corporation and the organization, creation and establishment of White Rock Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 12547 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by White Rock Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by White Rock Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 07192007-D02; LM Land Holdings, L.P. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 194 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) the Petitioner represents that there are no lien holders on the property except Compass Bank; (3) the proposed District will contain approximately an area of 283.75 acres located within Fort Bend County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2007-772, effective July 3, 2007, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $37,550,000. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 07312007-D03; Headway Estates, Ltd., and Sunlake Limited (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 461 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the holders of title to a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately an area of 175.9088 acres located within Harris County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-1077, effective September 20, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $12,030,000. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 07242007-D04; HSM Arcadia Station, Ltd. (Petitioner) filed a petition for creation of Galveston County Municipal Utility District No. 34 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) there is one lien holder on the property to be included in the proposed District, and the lien holder is Dickinson Partners, Ltd; (3) the proposed District will contain approximately an area of 362.368 acres located within Galveston County, Texas; and (4) the proposed District is within the

corporate boundaries of the City of Dickinson, Texas and is within the corporate boundaries of the City of Santa Fe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 859-2006, effective April 11, 2006, the City of Dickinson, Texas, gave its consent to the creation of the proposed District, and by Resolution No. 2006-12, effective April 13, 2006, the City of Santa Fe, Texas gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $27,915,000. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 07192007-D02; LM Land Holdings, L.P. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 194 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) the Petitioner represents that there are no lien holders on the property except Compass Bank; (3) the proposed District will contain approximately an area of 283.75 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extra territorial jurisdiction boundaries of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2007-772, effective July 3, 2007, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $37,550,000. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 07312007-D03; Headway Estates, Ltd., and Sunlake Limited (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 461 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the holders of title to a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately an area of 175.9088 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-1077, effective September 20, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $12,030,000. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200706331
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 12, 2007

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Notice of Opportunity for Comments Concerning a Proposed Amendment to the List of *De Minimis Facilities or Sources*

The Texas Commission on Environmental Quality (TCEQ), under 30 TAC Chapter 116, requests public comment concerning a proposed amendment to the List of *De Minimis Facilities or Sources* authorized by 30 TAC §116.119.

The TCEQ is proposing to amend the List of *De Minimis Facilities or Sources* by adding the following: Domestic comfort heating and cooling facility constructed and operated at a domestic residence for domestic use; comfort air conditioning systems or comfort ventilating systems which are not used to remove air contaminants generated by or released from specific units of equipment; equipment used for hydraulic or hydrostatic testing; any feed grinding operation which is used only for noncommercial purposes; replacement or addition of cotton gin stands where no other equipment change or additions are involved; equipment used exclusively for bonding lining to brake shoes; platen presses used for laminating; equipment used exclusively for the melting or application of wax; vacuum-producing devices used in laboratory operations; equipment used exclusively for the dyeing or stripping of textiles (using only aqueous solutions); all agricultural aqueous fertilizer storage tanks (excluding aqueous fertilizer manufacturing); equipment used for compression molding and injection mold-

ing of thermo-plastics (excluding chemical reaction processes); equipment used exclusively for the packaging of lube oils or greases; laundry dryers, extractors, or tumblers used for fabrics cleaned with water solutions of bleach or detergents (excluding dry cleaning); equipment used in eating establishments (in-store bakeries and restaurants) for the purpose of preparing food for human consumption (replace "In-store Bakeries, Restaurants, and Other Food Preparation Activities" from the current list); bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analyses (excluding pilot plants); all animal racing facilities, domestic animal shelters, zoos, and their associated confinement areas, stables, feeding areas, and waste collection and treatment facilities (excluding incineration and/or concentrated animal feeding operations); non-industrial and non-commercial ovens, mixers, blenders, barbecue pits, and cookers if the products are edible and intended for human consumption; vacuum cleaning systems used exclusively for non-industrial, non-commercial, or residential housekeeping purposes; equipment used exclusively for steam cleaning of fabrics, plastics, rubber, wood, or vehicle engines or drive trains; blast cleaning equipment using only water as the cleaning media; equipment used exclusively to store or hold dry sweet natural gas; equipment used for inspection of metal products (excluding inspection procedures that use metals or non-aqueous solvents); and equipment used exclusively for pressing either hot or cold metals by some mechanical means.

Section 116.119(c)(1) allows for amendments to the List of *De Minimis Facilities or Sources* by the executive director for facilities or sources considered to be *de minimis*. If added to the List of *De Minimis Facilities or Sources*, the specified facilities or sources are no longer required to obtain authorization from the TCEQ prior to construction. Therefore, the previous facilities or sources are proposed to be *de minimis* facilities or sources.

The addition or deletion of a category of facilities, sources, or groups of facilities or sources to the List of *De Minimis Facilities or Sources* is subject to the procedural requirements of 30 TAC §116.119, which includes a 30-day public comment period. The List of *De Minimis Facilities and Sources* is located on the TCEQ Web site at: *http://www.tceq.state.tx.us/permitting/air/guidance/newsourcereview/list-of-de-minimis-facilities.html*. Any interested or affected person has the opportunity to provide written comments pertaining to the addition or deletion of a category of facilities, sources, or groups of facilities or sources to the List of *De Minimis Facilities or Sources*.

Comments may be mailed to Steven Hagood, Texas Commission on Environmental Quality, Office of Permitting, Remediation and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments must be received by 5:00 p.m., January 21, 2008. To inquire about the technical review of the *de minimis* request, contact Mr. Hagood at (512) 239-1580.

TRD-200706282
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 11, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 21, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 21, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Mohammad Arif dba Super Stop 4; DOCKET NUMBER: 2007-0723-PST-E; TCEQ ID NUMBER: RN103001798; LOCATION: 2590 North Main Street, Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board executive order(s), and free of defects that would impair the effectiveness of the system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and Stage II vapor space manifolding and dynamic pressure performance at least once every 36 months; PENALTY: $4,690; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Yaman, Inc. dba 7 AM Food Store; DOCKET NUMBER: 2004-1799-PST-E; TCEQ ID NUMBER: RN101793479; LOCATION: 2728 Broadway Street, Galveston, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of underground storage tanks; PENALTY: $3,300; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Yetta Hustead dba High Five; DOCKET NUMBER: 2006-0944-PWS-E; TCEQ ID NUMBER: RN101221240; LOCATION: 7805 Farm to Market Road 2918, Brazoria, Brazoria County, Texas; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring of the PWS during the months of September and November of 2004 and June of 2005, and by failing to provide public notification of the failure to conduct monthly bacteriological sampling for the months of September and November of 2004, and June of 2005; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect four repeat samples following each total coliform-positive sample found on a routine sample during the month of August 2005, and by failing to provide public notification of the failure to collect and submit the appropriate number of repeat samples for the month of August 2005; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five distribution samples the month following a total coliform-positive result during the month of September 2005, and by failing to provide public notification of the failure to collect and submit the appropriate number of distribution samples for the month of September 2005; and Docket Number 2000-0385-PWS-E, by failing to pay an outstanding administrative penalty as required by a Commission Order; PENALTY: $1,755; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200706285
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 21, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 21, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: D & P Management Services, L.L.C. dba Airport Shell; DOCKET NUMBER: 2003-1163-PST-E; TCEQ ID NUMBER: RN102469491; LOCATION: 8610 Airport Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control procedures at a retail fueling facility; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III) and Texas Water Code (TWC), §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases, by failing to conduct a piping tightness test at least once per year, and by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance was accepted; 30 TAC §334.8(c)(4)(A)(vii) and TWC, §26.346(a), by failing to ensure the timely renewal of a previously issued UST delivery certificate; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST at the facility; and 30 TAC §334.48(a), by failing to ensure that the UST system was operated, maintained, and managed in a manner that would prevent releases of regulated substances from such systems; PENALTY: $27,000; Supplemental Environmental Project (SEP) offset amount of $13,500 applied to Houston-Galveston Area Emission Reduction Credit Organization Clean Cities Clean Vehicles; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Fort Worth Excavating, Inc.; DOCKET NUMBER: 2004-1318-WQ-E; TCEQ ID NUMBER: RN100733138; LOCATION: 5265 Shelby Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: surface mining operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General Permit; PENALTY: $3,210; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Southwest Shipyard, L.P.; DOCKET NUMBER: 2007-0794-AIR-E; TCEQ ID NUMBER: RN100248749; LOCATION: 18310 Market Street, Channelview, Harris County, Texas; TYPE OF FACILITY: maintenance facility where barges are sandblasted, painted, depressurized, degassed, and cleaned; RULES VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b), and New Source Review (NSR) Permit Number 9442, Special Condition Number 8, by failing to route emissions from the barge cleaning operations to a vapor collection system on January 20-21, 2007, February 7, 2007, March 13, 2007, April 24, 2007, and May 1, 2007; 30 TAC §116.116(a)(1) and THSC, §382.085(b), by failing to operate according to representations made in the permit application for NSR Permit Number 9442; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 9442, Special Condition Number 15(H), by failing to maintain the maximum loading rate limit of 300 gallons per hour; 30 TAC §115.542(b)(2) and (3), THSC, §382.085(b), and NSR Permit Number 9442, Special Condition Number 8, by failing to design and operate degassing and cleaning equipment to prevent volatile organic compound leaks; 30 TAC §116.116(a)(1) and THSC,

§382.085(b), by failing to operate according to representations made in the 2000 permit application for NSR Permit Number 9442; and 30 TAC §116.116(a)(1), THSC, §382.085(b), and NSR Permit Number 9442, Special Condition Number 10.A., by failing to operate according to representations made in the 2000 permit application for NSR Permit Number 9442; PENALTY: $77,276; SEP offset amount of $38,638 applied to Harris County Fourier Transform Infra Red Air Monitoring; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200706284
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 37

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 37, Financial Assurance, under the requirements of Texas Health and Safety Code, §382.017; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 1956, 80th Legislature, 2007, Regular Session. The proposed rulemaking would also require underground storage tank (UST) owners or operators to include evidence of financial assurance along with self-certification forms; require UST owners or operators to empty their tanks within 90 days of a termination of their financial assurance coverage unless they obtain coverage; and clarify and simplify the wording of financial assurance mechanisms to minimize confusion.

The commission will hold a public hearing on this proposal in Austin on January 17, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-038-037-AS. The comment period closes January 22, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Rob Norris, Financial Administration Division, (512) 239-6239.

TRD-200706176
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 7, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 116 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, and to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would implement Senate Bill 1673, 80th Legislature, Regular Session, 2007, that provides for submission of a preconstruction renewal application concurrently with a preconstruction amendment application under certain circumstances. The amended rule would specify that the amendment application must be filed not more than three years before the date the permit is scheduled to expire and must be subject to notice requirements under Texas Health and Safety Code, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing. Processing a renewal and amendment application concurrently would be optional for applicants.

The commission will hold a public hearing on this proposal in Austin on January 29, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-024-116-EN. The comment period closes February 4, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Rebecca Southard, Air Permits Division, (512) 239-1638.

TRD-200706174
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 7, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 328

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed amendments to 30 TAC Chapter 328, Waste Minimization and Recycling, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking requires persons that manufacture or sell new computer equipment to implement a convenient and environmentally sound program for the collection, recycling, and reuse of used computer equipment. The commission will be responsible for oversite of some of the administrative and regulatory requirements of the program.

The commission will hold a public hearing on this proposal in Austin on January 14, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

In addition to comments on the proposed sections, the TCEQ invites any other comments appropriate to the effective implementation of the program consistent with the statute. Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. Comments should reference Rule Project Number 2007-036-328-AS. The comment period closes February 4, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact G. Michael Lindner, Small Business and Environmental Assistance, (512) 239-3045.

TRD-200706196
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 7, 2007

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Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission or TCEQ) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) to meet the requirements of the Federal Clean Air Act (FCAA), §110(a)(2)(D)(i)(II), 169A and 169B addressing visibility impairment due to regional haze in Federal Class I areas. The proposed revisions reference existing control strategies to reduce haze causing emissions in Texas, as well as reference the state's participation in the Federal Best Available Retrofit Technology (BART) process and the Federal Clean Air Interstate Rule (CAIR).

The proposed revision demonstrates the federal requirements towards reasonable progress in reducing visibility impairment at Federal Class I areas, including Big Bend and Guadalupe Mountains National Parks, resulting from man-made pollution. If adopted, the proposed revisions would fulfill Texas' obligation under sections 169A and 169B of the Federal Clean Air Act to submit a SIP revision to the United States Environmental Protection Agency (EPA). There is no associated rulemaking with this SIP revision.

A public hearing on this proposal will be held in Austin, on February 19, 2008, at 2:00 p.m., at TCEQ's Austin Headquarters Office, 12100 Park 35 Circle, Building E, Room 201-S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, TCEQ staff will be available to answer questions on the proposal 30 minutes prior to the hearing. A summary of the Federal Land Managers' conclusions and recommendations on the proposed SIP revision, if any, will be available after January 18, 2008. Notification of the availability of this information will be posted on the commission's web site at *http://www.tceq.state.tx.us/implementation/air/sip/Hottop.html*.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the Air Quality Division at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Margaret Earnest, MC 206, Air Quality Division, Chief Engineer's Office, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-5687. Electronic comments may be submitted at *www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments pertaining to the proposed Regional Haze SIP revision should reference Project Number 2007-016-SIP-NR. The comment period closes on February 22, 2008. Copies of the proposed revision may be viewed at the commission's web site at *http://www.tceq.state.tx.us/implementation/air/sip/bart/haze_sip.html*. For further information, please contact Margaret Earnest, Air Quality Planning Section, (512) 239-4581.

TRD-200706283
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 11, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of November 20, 2007 through December 3, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ARTHUR EDWARD BAYER has applied for a renewal of TPDES Permit No. WQ0013819001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located adjacent to the east right-of-way of Lemm Gully, approximately 1,400 feet south of Spring-Cypress Road in Harris County, Texas.

AUC GROUP LP as applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014724002, to authorize the discharge of treated domestic waste-

water at a daily average flow not to exceed 995,000 gallons per day. The facility will be located approximately 1,700 feet north-northwest of the intersection of Hanselman Road and County Road 67, on the west side of Chocolate Bayou in Brazoria County, Texas.

BORING SPECIALTIES INC has applied for a renewal of TPDES Permit No. WQ0012484001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 14730 Yarberry Street, approximately 0.5 mile southeast of the intersection of Hardy Road and Aldine-Bender Road (Farm-to-Market Road 525) in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 24 has applied for a renewal of TPDES Permit No. WQ0011988002, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 4,000 feet north of Louetta Road, on and approximately 2,000 feet east of Steubner Airline Road in the Community of Springs in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 368 has applied for a renewal of TPDES Permit No. WQ0012044001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately one mile east of Farm-to-Market Road 249 and approximately 1,200 feet south of Boudreaux Road in Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT 92 has applied for a renewal of TPDES Permit No. WQ0010908001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The plant site is located at 25515 Holyoke, at the northeast end of Bell Chase Lane, approximately 2 miles east of the City of Spring in Harris County, Texas

KINDER MORGAN PETCOKE LP which operates Sims Bayou Petcoke Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0002659000, which authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001 and the disposal of stormwater via evaporation. The facility is located at 9847 Lawndale, Houston, Texas, 2500 feet from the intersection of Sims Bayou and the Houston Ship Channel, near the City of Houston, Harris County, Texas.

KLEIN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012224001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility is located at the Klein Independent School District Transportation Center, 2,000 feet east and 2,000 feet north of the intersection of Stuebner Airline Road and Spring Cypress Road in Harris County, Texas.

MONTGOMERY COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT 1 has applied for a renewal of TPDES Permit No. WQ0010857001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. The facility is located approximately eleven miles south of the City of Conroe, three miles west of the Interstate Highway 45 crossing of Spring Creek and at the south end of Glen Loch Drive in the Timber Ridge-Timber Lake subdivision in Montgomery County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 32 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0013152001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 650,000 gallons per day to a daily average flow not to exceed 683,000 gallons per day. The facility is located approximately 4,500 feet south of the intersection of Farm-to-Market Road 2920 and Kuykendahl Road, approximately 9,500 feet northeast of the intersection of Stuebner Airline Road and Spring Cypress Road in Harris County, Texas.

RICHFIELD INVESTMENT CORPORATION has applied for a renewal of TPDES Permit No. WQ0013614001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 610,000 gallons per day. The facility will be located approximately 1 mile northeast of State Highway 249, approximately 7,000 feet northwest of Chicago Rock Island and Pacific and Missouri Pacific Railroad crossing, and approximately 4.5 miles northwest of the City of Tomball in Montgomery County, Texas.

SPRING CENTER INC has applied for a renewal of TPDES Permit No. WQ0012637001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located approximately 1 1/2 miles north of the City of Spring at 22820 Interstate Highway 45 North in Harris County, Texas.

THE VILLAGE AT NORTHLAKE II LTD has applied for a new permit, Proposed Permit No. WQ0014764001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via a subsurface distribution system of gravity flow infiltration chambers with a minimum area of 2.3 acres of non-public access land. The facility and disposal site are located at 10505 Turkey Bend Drive, 45 feet northeast of the intersection of Deer Canyon Road and Turkey Bend, adjacent to Turkey Bend, in the City of Jonestown in Travis County, Texas.

UA HOLDINGS 1994-5 LP has applied for a renewal of TPDES Permit No. WQ0012248001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 22426 Tomball Parkway, approximately 1,000 feet southeast of the intersection of State Highway 249 (Tomball Parkway) and Spring Cypress Road in Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200706329
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 12, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of November 27, 2007 through December 6, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

BAMMEL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011105001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,600,000 gallons per day. The facility is located at on the south bank of Cypress

Creek, approximately 6,400 feet downstream of the crossing of Cypress Creek by Stuebner-Airline Road in Harris County, Texas.

CITY OF BEDIAS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014838001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 95,000 gallons per day. The facility will be located within the northeast quadrant of the City of Bedias, on Farm-to-Market Road 1696 approximately 1,150 feet east of Highway 90 in Grimes County, Texas.

Calhoun County Navigation District, which operates the E S Joslin Power Station, a steam electric power generation facility, has applied for a renewal of TPDES Permit No. WQ0001303000, which authorizes the discharge of once through cooling water and previously monitored effluents (PMEs) (low volume wastewater (consisting of demineralizer regeneration wastes, boiler blowdown, floor and area drains, metal cleaning wastes, chemical metal cleaning waste, storm water runoff, and PMEs [treated domestic wastewater from Outfall 201] from Outfall 101) at a daily average flow not to exceed 231,000,000 gallons per day via Outfall 001. The facility is located approximately 1.5 miles south of State Highway 35, south of the City of Point Comfort, Calhoun County, Texas.

E.I. DU PONT DE NEMOURS AND COMPANY operates a facility which manufactures copper based chemicals for agricultural and industrial purposes, has applied for a major amendment to TPDES Permit No. WQ0012640000, to accommodate the replacement of the current wastewater treatment system with a new treatment system (including a new compliance period to meet final limits); reduce the daily-average dry-weather flow to 25,000 gallons per day; modify effluent limitations accordingly with the reduced permitted daily average dry-weather flow; remove the freeboard requirement for wastewater retention Pond No. 4; and remove or increase of the effluent limitations for total nickel, total selenium, and sulfates at Outfall 001. The current permit authorizes the discharge of process wastewater, utility waters (cooling tower blowdown and boiler blowdown) and storm water at a daily average dry-weather flow not to exceed 150,000 gallons per day via Outfall 001. This application was submitted to the TCEQ on March 6, 2007. The facility is located at 12701 Almeda Road; on the west bank of Sims Bayou; approximately four miles south of the intersection of Loop 610 and State Highway 521; in the City of Houston, Harris County, Texas.

ENCANTO REAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0013648001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 3 1/4 miles northwest of the intersection of Interstate Highway 45 and Spring-Stuebner Road, just south of Spring Creek and north of the City of Houston in Harris County, Texas.

FORESTAR (USA) REAL ESTATE GROUP INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014815001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day in the final phase. The facility will be located on the southwest side of State Highway 185, approximately 5,500 feet northwest of its intersection with State Highway 238 in Calhoun County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

GREIF INDUSTRIAL PACKAGING & SERVICES LLC which operates a steel drum manufacturing steel drums, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004823000, to authorize the discharge of reverse osmosis reject, softener backwash, and storm water runoff at a daily average flow not to exceed 1,533 gallons per day via Outfall 001. This application was submitted to the TCEQ on February 27, 2007. The facility is located at 10850 Strang Road, City of La Porte, Harris County, Texas.

GULF COAST TRADES CENTER has applied for a renewal of TPDES Permit No. WQ00012159001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The facility is located within the Gulf Coast Trades Center Complex approximately 3.8 miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 1375 and northeast of Lake Conroe in Walker County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 24, c/o Strawn and Richardson, 602 Sawyer Street, Suite 205, Houston, Texas 77007, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011988003, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 18519 Stuebner Airline, approximately 7,500 feet north of Louetta Road, and the west side of Steubner Airline Road in the Community of Spring in Harris County, Texas.

HOOKS MOBILE HOME PARK, LTD. has applied for a renewal of TPDES Permit No. WQ0012083001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 12019 Aldine Westfield Road, approximately 1.75 miles south of the intersection of Aldine Mail Road and Aldine Westfield Road and approximately 1.75 miles north of the intersection of Hopper Street and Aldine Westfield Road in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495126, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1,320 feet north of the intersection of State Highway 249 and Mills Road and approximately 2.0 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960 in Harris County, Texas.

CITY OF HOUSTON has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0010495142 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 855,000 gallons per day to an annual average flow not to exceed 2,000,000 gallons per day. The facility is located at 26808 Sorters Road, approximately 250 feet south of River Ridge Drive and 0.75 mile west of U.S. Highway 59 in Montgomery County, Texas.

JULIE ANN THAMES has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014753001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility will be located approximately 7 miles west of the City of Burleson, 1 mile south of Farm-to-Market Road 1187 and 1/2 mile west of Farm-to-Market Road 1902 in Johnson County, Texas.

PONDEROSA JOINT POWERS AGENCY has applied for a renewal of TPDES Permit No. WQ0011081001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,870,000 gallons per day. The facility is located at 17940 Butte Creek Drive in Houston, immediately south of Cypress Creek and ap-

proximately 2.3 miles west of Interstate Highway 45 in Harris County, Texas.

REAGENT CHEMICAL & RESEARCH, INC. which operates Reagent Chemical - Jacintoport, has applied for a renewal of TPDES Permit No. WQ0004552000, which authorizes the discharge of railcar rinsewater on an intermittent and flow variable basis via Outfall 001, trailer rinsewater on an intermittent and flow variable basis via Outfall 002, and steam condensate and storm water on an intermittent and flow variable basis via Outfall 003. The facility is located at 2250 Appelt Drive, approximately 0.6 miles north of the intersection of Appelt Drive and Jacintoport Boulevard, Harris County, Texas.

RICHARD CLARK ENTERPRISES, L.L.C. has applied for a renewal of TPDES Permit No. WQ0012851001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 32927 State Highway 249, approximately 600 feet west of the Decker Branch crossing of State Highway 249 and approximately 2.3 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1774 in Montgomery County, Texas.

SAN JACINTO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0012597001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,800,000 gallons per day. The application also includes a request for an extension of the temporary variance to the existing copper water quality standard for the Panther Branch above Lake Woodlands. The existing permit includes a temporary variance to the existing copper water quality standard to allow the permittee a three-year period in which to determine a site-specific water-effects ratio (WER) for copper in the area of Panther Branch above Lake Woodlands. The site-specific WER was determined to be 6.45, which supports changing the freshwater criteria for dissolved copper to less stringent criteria. In view of this result, the temporary variance to the existing copper water quality standard is discontinued. No effluent limitation for copper is necessary. The WER will be considered for adoption in the Texas Surface Water Quality Standards. The facility is located approximately 2,000 feet northwest of the confluence of Bear Branch and Panther Branch, approximately 3.5 miles south of the intersection of Farm-to-Market Road 1488 and Interstate Highway 45 in Montgomery County, Texas.

TALLEY LAND DEVELOPMENT, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014817001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day in the final phase. The facility will be located 1.6 miles northeast of the intersection of Spring Hill Road and Highway 1385 in Denton County, Texas.

TEXMARK CHEMICALS, INC. which operates an oil distilling and chemical processing plant, has applied for a major amendment to TPDES Permit No. WQ0000786000 to reduce the monitoring frequency for benzene at Outfall 001 to once per year and to add a provision that regulates the discharges of storm water from the plant area not identifiable by a specified outfall. The current permit authorizes the discharge of process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 80,000 gallons per day via Outfall 001; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 900 Clinton Drive, at the intersection of Federal Road and Clinton Drive, approximately one mile west of the Washburn Tunnel in the City of Galena Park, Harris County, Texas.

UA HOLDINGS 1994-5, L.P. has applied for a renewal of TPDES Permit No. WQ0012000001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located immediately northeast of the intersection of Palmerton Lane and Meadow Vista, approximately 2,500 feet south of the intersection of Perry Road and Farm-to-Market Road 1960 and approximately 1 mile southwest of the intersection of Farm-to-Market Road 149 with Farm-to-Market Road 1960 in Harris County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200706330
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 12, 2007

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Public Notice - Shutdown/Default Orders

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 21, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 21, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone

numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Dallas AOS Enterprises Inc. dba Saniya's Grocery & Grill; DOCKET NUMBER: 2006-0154-PST-E; TCEQ ID NUMBER: RN102092624; LOCATION: 4020 West Northgate Drive, Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A), (E), (K), and §115.242(9) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board executive order(s), and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; 30 TAC §334.51(a)(6) and Texas Water Code (TWC), §26.3475(c)(2), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with the manufacturers' specifications; 30 TAC §334.50(a)(1)(A), (b)(2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the underground storage tank (UST) system which contained regulated substances including tanks, piping, and other ancillary equipment; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified as listed on the station's UST registration and self-certification form by a legible tag, label, or marking; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the motor vehicle fuel dispensing station; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.10(b), by failing to maintain all UST records at the station and make readily accessible and available for inspection upon request by commission personnel; PENALTY: $16,800; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Shalynah, Inc. dba Sammys 3; DOCKET NUMBER: 2006-1001-PST-E; TCEQ ID NUMBER: RN102030186; LOCATION: 1601 West Fairmont Parkway, La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(b)(2)(A)(ii) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(d)(4)(A)(i) and TWC, §26.3475(c)(1), by failing to provide release detection for the USTs and for failing to conduct inventory volume measurements in conjunction with automatic tank gauging; 30 TAC §334.50(d)(4)(A)(ii)(II) and TWC, §26.3475(c)(1), by failing to put the automatic test gauging into test mode to perform an automatic test for substance loss capable of detecting a release of 0.2 gallons per hour from any portion of the tank containing regulated substances; 30 TAC §334.51(b) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level of the tank; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $11,790; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200706286
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2007

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 14, 2008, at 10:00 a.m. to receive public comment on the proposed interim per diem Medicaid reimbursement rate for large, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which requires public notice and hearings on proposed Medicaid reimbursements before such rates are approved by HHSC. The public hearing will be held in the Lone Star Conference Room of the HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following interim reimbursement rates for large state-operated ICF/MR facilities operated by DADS:

Large State-Operated ICF/MR Facilities-Medicaid Only clients Proposed interim daily rate: $381.26

Large State-Operated ICF/MR Facilities-Dual-eligible Medicaid/Medicare clients Proposed interim daily rate: $365.09

HHSC is proposing these interim rates so that adequate funds will be available to serve clients in these facilities. The proposed interim rates account for actual and projected increases in costs to operate these facilities. The proposed interim rates will be effective September 1, 2007, if approved.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement Methodology.

Briefing Package. A briefing package describing the proposed payment rates will be available on December 28, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200706181
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 7, 2007

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 08-002, Amendment Number 806, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective January 1, 2008.

The purpose of this amendment is to modify the Medicaid reimbursement methodology for freestanding psychiatric facilities. The current reimbursement methodology is a prospective payment system based on each facility's Medicaid cost report with an increase for provider-based physician costs. This methodology has been in place since November 1, 2006. HHSC was directed by the 80th Legislature in the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 49, Conference Committee Report on H.B. 1, 80th Leg. R.S. (2007)) to adopt a Medicaid reimbursement methodology for freestanding psychiatric facilities that is similar to the prospective payment system used by Medicare. Payment for services provided by freestanding psychiatric facilities will be based on the Medicare federal base rate with several adjustments for factors that influence the cost of care. These adjustments include a rural adjustment, which recognizes the higher costs incurred by hospitals outside urban areas; a length of stay adjustment that takes into account the higher costs of care for hospitalizations that have a shorter length of stay; and a wage adjustment that takes into account the cost of wages specific to county location.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $10,113,009 for federal fiscal year (FFY) 2008 (January 1, 2008 to September 30, 2008), consisting of $6,124,438 in federal funds and $3,988,571 in state general revenue. For FFY 2009-2010, the estimated additional annual expenditure is $13,484,012 consisting of $8,014,897 in federal funds and $5,469,115 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Amber Lovett by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, mail code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1371; by facsimile at (512) 491-1998; or by e-mail at amber.lovett@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200706314
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 11, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the NorthSTAR program, a 1915(b) waiver to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date of the waiver amendment is October 1, 2007.

The current NorthSTAR waiver is approved from October 1, 2007, through September 30, 2009. The waiver is a managed care approach to the delivery of mental health and chemical dependency services to the eligible residents of Dallas, Ellis, Collin, Hunt, Navarro, Rockwall and Kaufman counties. It provides a comprehensive mental health/substance abuse benefit package for all eligible individuals.

The proposed waiver amendment would include in the Behavioral Health Organization's Medicaid per member per month (PMPM) rate development, costs for certain services that are provided "in lieu of" Medicaid state plan services. This is consistent with CMS' guidance to other Medicaid managed care programs operating under 1915(b) waivers. The amendment maintains cost effectiveness for each year in the two-year waiver period covering 2007 through 2009.

To obtain copies of the proposed waiver amendment, interested parties may contact Carmen Samilpa-Hernandez by mail at Texas Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.samilpa-hernandez@hhsc.state.tx.us.

TRD-200706317
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 12, 2007

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Addison	Rockwall Regional Hospital LLC DBA Presbyterian Hospital of Rockwall	L06103	Addison	00	11/02/07
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	00	11/01/07
Fort Worth	University of North Texas Health Science Center DBA UNT Health	L06123	Fort Worth	00	11/05/07
Plano	Collin County Cardiology PA	L06096	Plano	00	11/03/07
Throughout Tx	Uranium Energy Corporation	L06127	Goliad	00	10/31/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Simona Scumpia MD PA	L05579	Austin	04	11/08/07
Austin	PPD Development Inc DBA PPD Development	L04348	Austin	18	11/08/07
Austin	High End Systems Inc	L04908	Austin	05	10/30/07
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	53	11/08/07
Beeville	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Beeville	L04510	Beeville	25	10/31/07
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	54	11/05/07
Bishop	Ticona Polymers Inc	L02441	Bishop	44	11/08/07
Brownsville	Heart Institute of Brownsville	L05261	Brownsville	08	10/30/07
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	47	11/05/07
Corpus Christi	Mcturbine Inc	L04341	Corpus Christi	07	11/02/07
Corsicana	PACTIV Corporation	G01831	Corsicana	13	11/12/07
Dallas	Medical Service/Dallas Nephrology Associates	L02604	Dallas	26	11/08/07
Dallas	PAJ Inc DBA Prime Art & Jewel	L06115	Dallas	01	11/06/07
Dallas	Petnet Solutions Inc	L05193	Dallas	32	11/02/07
Decatur	Wise Regional Health System	L02382	Decatur	31	11/02/07
Deer Park	Equistar Chemicals LP	L00204	Deer Park	62	11/03/07
Denton	Rocky Mountain Medical Center LP DBA North Texas Hospital	L05936	Denton	03	11/08/07
Denton	COR Specialty Associates of North Texas PA DBA The Denton Heart Group	L05381	Denton	03	10/31/07
Desoto	Vincent P Barr MD	L05899	Desoto	02	11/09/07
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	17	11/09/07
El Paso	El Paso Healthcare System Ltd DBA Del Sol Medical Center	L02551	El Paso	51	11/08/07
El Paso	El Paso Healthcare System Ltd DBA Las Palmas Medical Center	L02715	El Paso	77	11/02/07
El Paso	Southwest X-Ray LP	L05207	El Paso	07	11/01/07
Fairfield	East Texas Medical Center Fairfield	L05195	Fairfield	07	10/31/07
Garland	Cardiology Consultants of North Dallas PA	L05454	Garland	09	11/06/07
Garland	Garland Cardiac Imaging LP	L05948	Garland	02	11/01/07
Gonzales	Gonzales Healthcare System DBA Memorial Hospital	L03473	Gonzales	13	11/08/07
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	27	10/31/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Grapevine	COR Specialty Associates of North Texas PA	L05576	Grapevine	05	10/31/07
Harlingen	Heart Clinic PLLC	L04514	Harlingen	21	11/08/07
Harlingen	Valley Coop Oil Mill	L02908	Harlingen	12	11/01/07
Houston	Westhollow Technology Center	L02116	Houston	47	11/09/07
Houston	E+ Pet Imaging VII LP DBA Pet Imaging of Houston - West	L05806	Houston	05	11/09/07
Houston	The Pet Scan Center	L05411	Houston	11	11/07/07
Houston	Cambridge Heart Center PA	L05623	Houston	11	11/05/07
Houston	Cambridge Heart Center PA	L05623	Houston	10	10/31/07
Houston	Rice Nuclear Diagnostics	L05830	Houston	09	11/01/07
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology Center	L04452	Houston	45	11/01/07
Irving	COR Specialty Associates of North Texas PA	L05373	Irving	13	11/06/07
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	69	11/02/07
Kingwood	KPH Consolidation Inc DBA Kingwood Medical Center	L04482	Kingwood	26	11/05/07
La Porte	Dow Chemical Company USA Houston Operations	L00510	La Porte	68	11/13/07
Laredo	Cardiovascular Consultants PA DBA Nuclear Medicine of Eagle Pass	L05377	Laredo	05	11/06/07
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	13	11/02/07
Lubbock	IBA Molecular North America Inc DBA IBA Molecular	L05482	Lubbock	14	11/05/07
McKinney	Texas Institute of Cardiology PA	L05953	McKinney	01	11/01/07
Mesquite	Southwest Cardiac Associates	L05589	Mesquite	06	10/31/07
Midland	Ram Kolluru MD PA	L05933	Midland	01	11/01/07
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	26	11/06/07
Nassau Bay	Christus Health DBA Christus St John Hospital	L03291	Nassau Bay	28	11/09/07
New Braunfels	McKenna Memorial Hospital	L02429	New Braunfels	45	10/31/07
Paris	Paris Cardiology Center	L06007	Paris	02	11/09/07
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	236	11/09/07
San Antonio	Texas Cancer Clinic	L05786	San Antonio	08	11/09/07
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	95	11/05/07
Sherman	David F Davis MD FACC PA	L05477	Sherman	04	11/06/07
Sugarland	US Imaging Inc DBA Fort Bend Imaging	L04459	Sugarland	32	11/01/07
Temple	Scott and White Memorial Hospital; and Scott Sherwood and Brindley Foundation DBA Scott and White Memorial Hospital	L00331	Temple	80	10/31/07
Texarkana	Christus Health ARK-LA-TEX DBA Christus Saint Michael Health System	L04805	Texarkana	19	11/07/07
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	56	11/13/07
Throughout TX	Rentech Boiler Services Inc	L05624	Abilene	09	11/02/07
Throughout TX	Desert Industrial X-Ray LP	L04590	Abilene	72	11/05/07
Throughout TX	Team Industrial Services Inc	L00087	Alvin	171	11/05/07
Throughout TX	Lower Colorado River Authority	L02738	Austin	42	11/02/07
Throughout TX	ExxonMobile Oil Corporation	L00603	Beaumont	82	11/14/07
Throughout TX	Brazos Valley Inspection	L02859	Bryan	62	11/01/07
Throughout TX	South Texas Mining Venture LLP	L06017	Corpus Christi	02	11/09/07
Throughout TX	Star-Jet Services Inc	L02214	Corpus Christi	21	11/13/07
Throughout TX	National Inspection Services LLC	L05930	Crowley	15	11/07/07
Throughout TX	Archana Inc	L05931	El Paso	02	11/12/07
Throughout TX	Precision Energy Services Inc	L04286	Fort Worth	71	11/13/07
Throughout TX	Almac LLC	L05721	Friendswood	04	11/12/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	METCO	L03018	Houston	177	11/01/07
Throughout TX	Material Inspection Technology Inc	L05672	Houston	24	11/01/07
Throughout TX	HVJ Associates Inc	L03813	Houston	34	11/05/07
Throughout TX	METCO	L03018	Houston	178	11/13/07
Throughout TX	QC Laboratories Inc	L05956	Houston	04	11/13/07
Throughout TX	OSCS Inc	L05813	Keene	07	11/13/07
Throughout TX	Marco Inspection Services LLC	L06072	Kilgore	05	11/14/07
Throughout TX	Acuren Inspection Inc	L01774	La Porte	238	11/07/07
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	135	11/14/07
Throughout TX	Hi-Tech Testing Service Inc	L05021	Longview	66	11/06/07
Throughout TX	Techcorr USA LLC	L05972	Pasadena	37	11/06/07
Throughout TX	Techcorr USA LLC	L05972	Pasadena	38	11/07/07
Throughout TX	Century Inspection Inc	L00062	Ponder	103	11/05/07
Throughout TX	Amtech Building Services Inc	L04486	Richardson	10	11/02/07
Throughout TX	IHI Southwest Technologies Inc	L05278	San Antonio	12	11/02/07
Throughout TX	Clough Harbour & Associates LLP	L05355	Sanger	20	11/02/07
Throughout TX	Schlumberger Technology Corporation	L01833	Sugarland	143	11/07/07
Throughout TX	Blazer Inspection Inc	L04619	Texas City	49	11/05/07
Tyler	Tyler Internal Medicine Associates PA	L05597	Tyler	05	11/08/07
Tyler	Carter Bloodcare	L04826	Tyler	11	11/07/07
Uvalde	Uvalde County Hospital Authority DBA Uvalde Memorial Hospital	L03327	Uvalde	16	10/31/07
Webster	Cardiovascular Clinic	L05949	Webster	03	11/06/07
Wichita Falls	North Texas Surgi Center Inc DBA North Texas Surgi Center	L05847	Wichita Falls	04	11/07/07
Wichita Falls	Jack C Askins MD	L05588	Wichita Falls	03	11/08/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Brownsville	Heart Institute of Brownsville	L05261	Brownsville	08	10/30/07
Houston	Healthsouth Hospital for Specialized Surgery	L05164	Houston	06	11/08/07
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	62	11/09/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Desoto Surgicare Partners LTD DBA North Texas Surgery Center	L05873	Dallas	02	11/08/07
Fort Worth	Health Texas Provider Network DBA Baylor Specialty Assoc. of Fort Worth	L06000	Fort Worth	04	11/07/07
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	26	11/13/07
Wichita Falls	Howmet Castings & Services Inc DBA Alcoa Howmet Castings	L05106	Wichita Falls	12	11/02/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200706280
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 11, 2007

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Notice of Agreed Orders and a Suspension Order

Notice is hereby given that the Department of State Health Services (department) issued Orders to the following registrants.

Agreed Orders

Methodist Healthcare System of San Antonio (License Number L05076) of San Antonio. A total penalty of $5,000 shall be paid by registrant for violations of 25 Texas Administrative Code (TAC) Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Charlotte J. Deans, DC, dba Atlas Chiropractic Center (Registration Number R23458) of Wimberly. A total penalty of $1,000 shall be paid by registrant for violation of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Cambridge Heart Center, PA (License Number L05623) of Houston. A total penalty of $2,500 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

San Antonio Orthopaedic Surgery Center. (Registration Number R26878) of San Antonio. A total penalty of $1,000 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Gulf Coast Weld Spec, Inc. (License Number L05426) of Beaumont. A total penalty of $2,000 shall be paid by registration for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Fugro Consultants (License Number L04322) of Pasadena. A total penalty of $3,500 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Aztec Manufacturing Partnership, LTD (License Number L05056) of Crowley. A total penalty of $3,000 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Edward Dean Meyer, Radiographer (Under License Number L05426) of Beaumont. The Department shall change registrant's radiographer trainer status to radiographer status for a period of twelve months for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Allied Testing Laboratories, Inc. (License Number L00880) of Houston. A total penalty of $1,500 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Gregory D. Peter, DC, PA (Registration Number R11425) of Huntsville. A total penalty of $1,250 shall be paid by registrant for violations of 25 TAC Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Suspension Order

Bobby Lee Stubbs, Jr., Radiographer (Radiographer ID. Number 13804) of Sinton. The department shall suspend registrant's radiographer certification card until further notice from the Attorney General's Office for violations pursuant to Health and Safety Code, §§232.008 - 232.009. The registrant shall also comply with additional terms required in the Order provided by this department.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1" then press "0", Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200706206
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 7, 2007

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Withdrawal Notice for Proposed Rules Relating to Radiation Control

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services withdraws the proposed repeal of §289.256 and new §289.256, concerning the medical and veterinary use of radioactive material, which was published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3115).

TRD-200706203
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 7, 2007

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Texas Department of Housing and Community Affairs

Request for Proposals for Training to Nonprofit Organizations

Summary.

The Texas Department of Housing and Community Affairs (TDHCA) announces a Request for Proposals for organizations to provide training to nonprofit organizations in the principles and applications of homebuyer education and Foreclosure Prevention and to certify participants as homebuyer education providers or a foreclosure prevention provider.

Request for Proposals

TDHCA is seeking proposals to provide training to nonprofit organizations throughout Texas. Such nonprofit organizations may include Texas Cooperative Extension offices, units of local governments, faith-based organizations, community housing development organizations, community development corporations, community-based organizations, and other organizations with a proven interest in community building. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post-purchase homebuyer education and to certify participants as providers. TDHCA will contract for at least one and as many as four weeks of training with a maximum of 40 participants per class. TDHCA will review and select the participants. The training locations will be determined by TDHCA and will be held in geographically diverse areas of the state.

Proposals must be received by TDHCA no later than 4:00 pm on Thursday, January 31, 2008. No proposals will be accepted after the deadline. Faxed or e-mailed applications will not be accepted. An original proposal and two copies must be submitted to the following address:

Texas Department of Housing and Community Affairs

Attn: Dina Gonzalez, Texas Homeownership Division

P.O. Box 13941

221 East 11th Street

Austin, TX 78711-3941

The full proposal can be found on TDHCA's website at www.tdhca.state.tx.us

TRD-200706301
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 11, 2007

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits proposals from individuals and organizations interested in providing technical assistance for the Gulf Coast Workforce Board and staff. The Workforce Board's system offers service for the more than 95,000 businesses and 4.5 million residents of a 13-county area that includes Houston, Harris County, and the twelve surrounding counties. Prospective bidders may obtain a copy of the Request for Proposals online at http://www.theworksource.org or by contacting Carol Kimmick at (713) 627-3200 or by sending e-mail to carol.kimmick@h-gac.com. Responses are due at H-GAC offices by 12:00 noon on Thursday, January 24, 2008. Late proposals will not be accepted. There will be no exceptions.

TRD-200706323
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: December 12, 2007

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Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified individuals or firms to provide financial monitoring services for the Gulf Coast Workforce system. The successful bidder or bidders will be offered an initial contract for one year beginning on or around March 1, 2008 - February 28, 2009. H-GAC may renew the contract for up to two additional years (through February 28, 2011). Prospective bidders may obtain a copy of the Request for Proposals online at http://www.theworksource.org or by contacting Carol Kimmick at (713) 627-3200 or by sending e-mail to carol.kimmick@h-gac.com. Responses are due at H-GAC offices by 12:00 noon on Thursday, January 24, 2008. Late proposals will not be accepted. There will be no exceptions.

TRD-200706324
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: December 12, 2007

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance proposed amendments to 28 TAC §5.9004, concerning the Amusement Ride Safety Inspection and Insurance Act. The proposed amendments were published in the November 30, 2007 issue of the *Texas Register* (32 TexReg 8667). The preamble contained clerical errors that require correction.

On page 8668, the seventh paragraph which begins, "Proposed redesignated §5.9004(d), which is existing §5.9004(3),..." contains a sentence in which text was omitted. The omitted text is shown here in italics:

"The necessary amount of insurance to be shown on the certificate is specified in proposed redesignated §5.9004(d)(2)(A)(i) *and (ii)*, which is existing §5.9004(3)(B)(ii)."

On page 8669, in the third paragraph which begins, "ECONOMIC IMPACT STATEMENT..." the first sentence contains an incorrect reference to "§5.9004(a)(3)." The reference should read "§5.9004(b)(3)".

TRD-200706325

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Notice of Filing

A petition has been filed with the Texas Department of Insurance under Reference No. A-0807-08 proposing amendments to the Plan of Operation (Plan) of the Texas Automobile Insurance Plan Association (TAIPA) for consideration by the Commissioner of Insurance. The petition contains amendments to the Plan of Operation that have been approved by the TAIPA Governing Committee.

Approval of the amendments is requested pursuant to Insurance Code Chapter 2151, which provides in §2151.151 that subject to the approval of the Commissioner, the TAIPA Governing Committee may make and amend the Plan of Operation.

TAIPA proposes to amend Sections 2, 5, and 21 of the Plan to delete references to a stated amount of minimum automobile liability insurance required by the Motor Vehicle Safety Responsibility Act, Transportation Code Chapter 601.

TAIPA proposes to amend Section 36 of the Plan, which determines how members of the Governing Committee are selected.

TAIPA also proposes to amend Section 54 of the Plan to allow personal lines property and casualty agents to participate in the TAIPA Producer Certification Program, to specify that a personal lines property and casualty producer may only submit applications for personal automobile policies and not for business automobile policies, and to specify that an agent licensed as a personal lines property and casualty agent must include a copy of the personal lines property and casualty license along with the application for Producer Certification.

These amendments are subject to the Commissioner's consideration for approval without a hearing. Any comments may be filed with the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice. An additional copy is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

For further information or to request a copy of the petition or proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 refer to Reference No. A-0807-08.

TRD-200706208
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 7, 2007

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Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PROGRAM SUPPORT ASSOCIATES, LLC, a domestic third party administrator. The home office is SEGUIN, TEXAS.

Application of EMC RISK SERVICES, LLC, a foreign third party administrator. The home office is DES MOINES, IOWA.

Application of AIG DOMESTIC CLAIMS, INC. (using the assumed name of AIG CLAIM SERVICES), a foreign third party administrator. The home office is DOVER, DELAWARE.

Application of HALLMARK MANAGEMENT, LLC, a foreign third party administrator. The home office is OKLAHOMA CITY, OKLAHOMA.

Application of RMS TEXAS, LLC (using the assumed name of Risk Management Services), a domestic third party administrator. The home office is BEAUMONT, TEXAS.

Application to change the name of MH ACQUISITION II, LLC to MEMBERHEALTH, LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200706336
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 12, 2007

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Texas Lottery Commission

Instant Game Number 1036 "Lucky Times 7"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1036 is "LUCKY TIMES 7". The play style for this game is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1036 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 1036.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 1X, 2X, 3X, 4X, 5X, 7X, $7.00, $10.00, $20.00, $25.00, $50.00, $70.00, $100, $500, $700, $7,000 and $77,777.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1036 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX

47	FRSV
48	FRET
49	FRNI
50	FFTY
1X SYMBOL	1 TIMES
2X SYMBOL	2 TIMES
3X SYMBOL	3 TIMES
4X SYMBOL	4 TIMES
5X SYMBOL	5 TIMES
7X SYMBOL	7 TIMES
$7.00	SEVEN$
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$70.00	SEVENTY
$100	ONE HUND
$500	FIV HUND
$700	SEV HUND
$7,000	SVN THOU
$77,777	77 THOU 777

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1036 - 1.2E

CODE	PRIZE
SVN	$7.00
TEN	$10.00
FRN	$14.00
SVT	$17.00
TWN	$20.00
TWE	$21.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $7.00, $10.00, $14.00, $17.00, $20.00 or $21.00.

H. Mid-Tier Prize - A prize of $27.00, $28.00, $30.00, $35.00, $50.00, $70.00, $100 or $500.

I. High-Tier Prize - A prize of $700, $7,000 or $77,777.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1036), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1036-0000001-001.

L. Pack - A pack of "LUCKY TIMES 7" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075. .

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY TIMES 7" Instant Game No. 1036 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY TIMES 7" Instant Game is determined once the latex on the ticket is scratched off to expose 37 (thirty-seven) Play Symbols. If a player matches the LUCKY NUMBER to any of YOUR NUMBERS in any GAME, the player wins PRIZE shown for that GAME. The player then scratches the BONUS BOX for a chance to win up to 7 TIMES the total amount won on the ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 37 (thirty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 37 (thirty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 37 (thirty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 37 (thirty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No duplicate winning YOUR NUMBER play symbol within the same game.

F. The 2X, 3X, 4X, 5X and 7X play symbols will appear on intended winning tickets as dictated by the prize structure.

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 7 and $7).

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY TIMES 7" Instant Game prize of $7.00, $10.00, $14.00, $17.00, $20.00, $21.00, $27.00, $28.00, $30.00, $35.00, $50.00, $70.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning

ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $27.00, $28.00, $30.00, $35.00, $50.00, $70.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY TIMES 7" Instant Game prize of $700, $7,000 or $77,777, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY TIMES 7" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY TIMES 7" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY TIMES 7" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1036. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1036 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	672,000	7.50
$10	268,800	18.75
$14	201,600	25.00
$17	67,200	75.00
$20	67,200	75.00
$21	67,200	75.00
$27	16,800	300.00
$28	33,600	150.00
$30	67,200	75.00
$35	29,400	171.43
$50	10,710	470.59
$70	3,990	1,263.16
$100	1,680	3,000.00
$500	966	5,217.39
$700	588	8,571.43
$7,000	42	120,000.00
$77,777	42	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.34. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1036 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1036, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200706155
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 6, 2007

♦ ♦ ♦

Instant Game Number 1038 "I Love Lucy™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1038 is "I LOVE LUCY™". The play style is key number match with win all.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1038 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1038.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, L SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000, $20,000 and MERCH SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1038 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
L SYMBOL	WIN ALL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$20,000	20 THOU
MERCH SYMBOL	PRIZE PACK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1038 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, PACK or $200.

I. High-Tier Prize - A prize of $2,000 or $20,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1038), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1038-0000001-001.

L. Pack - A pack of "I LOVE LUCY™" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "I LOVE LUCY™" Instant Game No. 1038 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in "I LOVE LUCY™" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the prize shown for that number. If a player reveals an "L" play symbol, the player wins ALL 10 PRIZES shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No three or more identical non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and $20).

F. The "L" (win all) play symbol will be used only as dictated by the prize structure.

G. The "L" (win all) play symbol will appear only once on winning tickets.

H. When the "L" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching a WINNING NUMBER play symbol.

I. The top prize will appear on all tickets unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "I LOVE LUCY™" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "I LOVE LUCY™" Instant Game prize of PACK, $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "I LOVE LUCY™" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "I LOVE LUCY™" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "I LOVE LUCY™" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,200,000 tickets in the Instant Game No. 1038. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1038 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	907,200	7.94
$4	504,000	14.29
$5	86,400	83.33
$10	86,400	83.33
$20	86,400	83.33
$50	25,380	283.69
PRIZE PACK	1,060	6,792.45
$200	1,560	4,615.38
$2,000	45	160,000.00
$20,000	10	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.24. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1038 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1038, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200706156
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 6, 2007

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Instant Game Number 1095 "Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1095 is "SET FOR LIFE". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1095 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1095.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, $10.00, $20.00, $50.00, $100, $200, $1,000, $2,500 or $5,000/WK SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1095 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY

$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$2,500	25 HUND
$5,000/WK	5TH/WK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1095 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,500 or $5,000/WK ($5,000 weekly for 20 years).

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1095), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1095-0000001-001.

L. Pack - A pack of "SET FOR LIFE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SET FOR LIFE" Instant Game No. 1095 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If the player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a COIN SYMBOL, the player wins the PRIZE shown instantly. If the player reveals a STAR SYMBOL, the player wins 10 times the prize shown. If the player reveals a LIFE SYMBOL, the player wins $5,000 a week. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The LIFE play symbol will only appear with the $5,000/WK prize symbol and both symbols will only appear on the three winning tickets as dictated by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SET FOR LIFE" Instant Game prize of $1,000 or $2,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "SET FOR LIFE" top level prize of $5,000/WK for 20 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "SET FOR LIFE" Instant Game prize of $5,000 per week for 20 years, the claimant will receive his prize:

1. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $250,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of $5,000,000.

2. If a payment falls on a holiday or weekend, the payment will be made on the following business day

E. As an alternative method of claiming a "SET FOR LIFE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of send-

ing a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 1095. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1095 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	2,160,000	5.56
$20	900,000	13.33
$50	210,000	57.14
$100	158,500	75.71
$200	26,000	461.54
$500	3,500	3,428.57
$1,000	300	40,000.00
$2,500	200	60,000.00
$5K/WK/20YRS	3	4,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1095 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1095, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200706223
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 10, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 6, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of GTE Southwest Incorporated, d/b/a Verizon Southwest to Amend a State-Issued Certificate of Franchise Authority, Project Number 35095 before the Public Utility Commission of Texas.

GTE Southwest Incorporated, d/b/a Verizon Southwest requested that the CFA be amended to include service area map, contained in Attachment 2 to its application, as the true and corrected Town of Westlake's service area.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35095.

TRD-200706307
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2007

♦ ♦ ♦

Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on November 2, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition of the Fowlerton Exchange for Expanded Local Calling Service, Project Number 34972.

The petitioners in the Fowlerton exchange request ELCS to the exchanges of Cotulla, Dilley, Jourdanton, Pearsall, and Pleasanton.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512)936-7120 or toll free at 1-888-782-8477 no later than January 7, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project No. 34972.

TRD-200706308

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2007

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Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 11, 2007, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of VTX Telecom, L.P. for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 35102.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 United States Code §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. VTX Telecom, L.P. seeks ETC/ETP designation in the Dilley exchange of GTE Southwest, Inc. d/b/a Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by December 28, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 35102.

TRD-200706309
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 4, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Empire One Telecommunications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35087 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private line, long distance and Voice-Over-Internet-Protocol.

Applicant's requested SPCOA geographic area includes the areas of Texas currently served by AT&T Texas, Verizon Southwest, and Embarq.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 31, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35087.

TRD-200706159
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 6, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas application on December 4, 2007, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Cajun Farms Subdivision). Docket Number 35089.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Julio Gonzalez requesting BPUB to provide electric utility service to a proposed 197.70-acre subdivision. The estimated cost to BPUB to provide service to this proposed area is $997,197.71. The area is presently undeveloped. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than January 3, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35089.

TRD-200706209
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 7, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on December 4, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant expects to file the LRIC study on December 14, 2007.

Docket Title and Number: Application of Southwestern Bell Telephone, LP d/b/a AT&T Texas for Approval of LRIC Study for Convenience Fee Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 35088.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 35088. Written

comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 35088.

TRD-200706146
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2007

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on December 7, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant expects to file the LRIC study on December 17, 2007.

Docket Title and Number: Application of Southwestern Bell Telephone, LP d/b/a AT&T Texas for Approval of LRIC Study for Opt-E-MAN Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 35097.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 35097. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 35097.

TRD-200706306
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2007

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Texas State Soil and Water Conservation Board

Notice of Public Hearing

The Texas State Soil and Water Conservation Board (TSSWCB) will conduct a public hearing January 16, 2008 at 1:00 p.m. in Temple at the Texas State Soil and Water Conservation Board State Office Hearings Room, 311 North 5th Street, to receive comments from the public and from soil and water conservation districts on the State Brush Plan.

The public hearing is being held under authority of §203.051 and §203.052 of the Agriculture Code of Texas.

The Brush Plan may be reviewed and downloaded from the TSSWCB website, URL address http://www.tsswcb.state.tx.us.

Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed plan should include appropriate sections, subsections, page numbers, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed plan should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Dawn Heitman, Public Information/Human Resources Office, 311 North 5th Street, Temple, Texas 76501, (254) 773-2250, Ext. 227 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposed plan may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503.

TRD-200706157
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: December 6, 2007

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Stephen F. Austin State University

Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of amendment of the University's contract with consultant Dr. Marianne Schmudde, 1230 Wright Circle #307, Celebration, Florida 34747. The original contract was in an amount not to exceed $45,000, and the Notice of Award was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10433). The contract was amended in an amount not to exceed $13,000, excluding travel and per diem in the May 11, 2007, issue of the *Texas Register*(32 TexReg 2515). The contract was further amended to include evaluation of the ENLACE Project beginning on August 27, 2007, and terminating on July 1, 2012, with a total amount not to exceed $24,950, inclusive of travel and per diem, in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8619). The contract is amended to include evaluation of the project "Consortium for Excellence in Rural Teacher Preparation (CERT-Prep)" beginning on October 1, 2007 and terminating on September 30, 2008, with an automatic renewal of one year, pending availability of grant funding and successful completion of evaluation activities for the initial contract period. This amendment is made for a total not to exceed $17,000, exclusive of travel and per diem.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant. Services will be on an as needed basis.

All inquiries should be directed to Marie Davenport, Coordinator of Project CERT-Prep, Stephen F. Austin State University, P.O. Box 13023, SFA Station, Nacogdoches, TX 75962; email: davenpormd@sfasu.edu; phone (936) 468-5494.

TRD-200706167

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 7, 2007

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Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract amendment. The original notice of award for the contract awarded to Maren Systems, LLC, 14101 Highway 290 West, Suite 500A, Austin, TX 78737, was filed in the September 8, 2006 issue of the *Texas Register* (31 TexReg 7193). The Notice of Availability was filed in the July 28, 2006 issue of the *Texas Register* (31 TexReg 5873). The notice of transfer to Radiant RFID, LLC, 12316 Pleasant Hill Court, Austin, TX 78738 for an amount not to exceed $48,000 was filed in the December 29, 2006 issue of the *Texas Register* (31 TexReg 10433). The notice of contract amendment was filed in the October 5, 2007 issue of the *Texas Register* (32 TexReg 6905).

The contract is amended to include VAT assignment of serial numbers to tags. This estimated cost of this amendment is $4,960.00.

Documents, films, recording, or reports of intangible results will not be presented by the outside consultant.

For further information, please contact Diana Boubel, Director/ HUB Coordinator of Purchasing and Inventory, P.O. Box 13030, Nacogdoches, TX 75962, (936) 468-4157.

TRD-200706171
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 7, 2007

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Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide interior design services for the Board Room, Small Conference Room, Recess Room, and associated projects. The Notice of Availability was filed in the November 16, 2007 issue of the *Texas Register* (32 TexReg Pages 8223).

The contract was awarded to Jill Ornelas, P.O. Box 635008, Nacogdoches, TX 75963-5008, for an amount not to exceed $150,000.

The beginning date of the contract is December 3, 2007; and the ending date is April 30, 2008.

Documents, films, recording, or reports of intangible results will not be presented by the outside consultant.

For further information, please contact Judy Buckingham, Assistant to the Board, P.O. Box 13026, Nacogdoches, TX 75962, (936) 468-4048.

TRD-200706168
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 7, 2007

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Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide evaluation services for a grant entitled CERT-Prep ELL from the U.S. Department of Education. The Notice of Availability was published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7150).

The contract was awarded to Dr. Marianne Schmudde, 1230 Wright Circle #307, Celebration, Florida 34747, for an amount not to exceed $70,000, inclusive of travel.

The beginning date of the contract is November 1, 2007, and the ending date is September 30, 2012.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please call (936) 468-2908.

TRD-200706178
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 7, 2007

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Texas A&M University System Board of Regents

Public Notice--Announcement of Finalist for the Position of Director of Texas Engineering Extension Service

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the Director of Texas Engineering Extension Service. Upon the expiration of 21 days, final action is to be taken by the Board of Regents of the Texas A&M University System.

Gary F. Sera

TRD-200706221
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: December 7, 2007

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Public Notice--Announcement of Finalist for the Position of President of Texas A&M University

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the president of Texas A&M University. Upon the expiration of 21 days, final action is to be taken by the Board of Regents of the Texas A&M University System.

Elsa A. Murano

TRD-200706219
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: December 7, 2007

♦ ♦ ♦

The Texas A&M University System

Request for Proposal

RFP 08-0005 Consulting Services: Natural Gas Campus Transmission Delivery and Distribution System Evaluation

Texas A&M University is accepting proposals and intends to enter into an Agreement with a consulting firm to evaluate the condition and routing of the existing Atmos-owned on-campus natural gas distribution system, including operational and financial considerations. Additionally, this consulting firm will be evaluating options for an alternate natural gas transmission delivery system to serve the Texas A&M campus in College Station, Texas.

Information may be obtained by contacting:

Jeff Zimmermann, A.P.P.

Senior Buyer

Dept of Strategic Sourcing & Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-3013

or e-mail at j-zimmermann@tamu.edu

Selection criteria will include methodology, qualifications, references, and cost. Proposals must be received on or before 2:00 p.m. CDT on January 24, 2008.

TRD-200706256
Vickie Burt Spillers
Executive Secretary to the Board
The Texas A&M University System
Filed: December 10, 2007

♦ ♦ ♦

Texas State University System

Notice of Award

The Texas State University System (TSUS), announces this Notice of Contract Award in connection with the Request for Proposals (RFP #758-07-00003) inviting consultants experienced in advising public entities (particularly institutions of higher education) on ways to reduce natural gas costs to provide offers of consulting services.

TSUS announces that a contract was awarded to Fowler Energy Company, 4520 Spicewood Springs Road, Austin, Texas 78759. The amount and term of the contract is based on a 30% share of the savings generated each month for the term of each New Utility Agreement, not to exceed five years after compensation begins.

The Notice of Request for Proposals (RFP #758-07-00003) was published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6901).

TRD-200706202
Peter E. Graves
Vice Chancellor for Contract Administration
Texas State University System
Filed: December 7, 2007

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The San Saba City/County Joint Airport Board, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the San Saba Airport during the course of the next five years through multiple grants.

Current Project: San Saba City/County Joint Airport Board. TxDOT CSJ No.: 0823SANSB. Scope: Extend, rehabilitate and mark Runway 13-31; rehabilitate and mark taxiways; rehabilitate terminal apron; install signage; construct turnarounds on Runway 13-31; install PAPI-2 on runway 13-31; extend MIRL on Runway 13-31; replace rotating beacon and tower; and install erosion/sedimentation controls.

The HUB goal for the current project is **11%**. TxDOT Project Manager is Alan Schmidt.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate Runway
2. Rehabilitate Taxiways
3. Rehabilitate Apron

The San Saba City/County Joint Airport Board reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "San Saba County Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scopes.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **January 11, 2008**, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals.

The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Alan Schmidt, Project Manager.

TRD-200706277
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 11, 2007

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Public Notice of DEIS (I-69/Trans-Texas Corridor)

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(5), the Texas Department of Transportation (department or TxDOT) is advising the public of the availability of the Tier One Draft Environmental Impact Statement (DEIS) for the I-69/Trans-Texas Corridor (I-69/TTC) (the Northeast Texas to Mexico Element) project. The project is being developed jointly with the Federal Highway Administration.

Later in this notice addresses are provided where you may review or get copies of the Tier One DEIS.

In 1991 the US Congress designated a National I-69 Corridor, from Canada to Mexico, as a high priority corridor, including elements within the state of Texas. In 2002, the department unveiled the Trans-Texas Corridor (TTC), its initiative for accommodating Texas' growing transportation needs. Because I-69 is a TTC system "priority" element and is also a national interstate highway priority corridor, the department decided to proceed with a combined I-69/TTC concept.

The I-69/TTC project is being developed to accommodate projected population growth and the demand for additional transportation infrastructure; accommodate expected increases in freight movement; provide transportation modal options, linkages, and capacity; sustain economic vitality; and accomplish the goals set forth by state and federal legislation. The purpose of the I-69/TTC project is to improve the international, interstate, and intrastate movement of goods and people, address anticipated south and east Texas transportation needs for the next 20 to 50 years, and sustain and enhance the economic vitality of Texas.

The I-69/TTC (the Northeast Texas to Mexico Element) is one of four high-priority TTC elements identified in the "*Crossroads of the Americas: Trans Texas Corridor Plan"*. The I-69/Trans-Texas Corridor study area is approximately 650 miles long. As proposed, I-69/TTC would be a multi-modal transportation facility. The study area generally follows existing US 59 from Texarkana to Laredo, Texas, with connection to the National I-69 Corridor near Shreveport, Louisiana, and potential connections to the Rio Grande Valley following US 77 and US 281.

I-69/TTC would be completed in phases over the next 50 years with alignments prioritized according to Texas' transportation needs. The department will oversee planning, environmental compliance, construction, and ongoing maintenance, although private vendors may be responsible for much of the daily operations.

Three alternatives were considered in the DEIS for the Tier One decision: 1) New Location Corridor; 2) Use of Existing/Planned Transportation Facilities; and 3) No Action. Assuming the I-69/TTC project is approved as a whole, the scope of the Tier One approval will include the Existing/Planned Transportation Facilities alternative (i.e. US 59, US 77, US 281, SH 44, and other transportation facilities identified for improvement). This is because the scope of the Tier One decision is to investigate and document the Purpose and Need, Goals, and Objectives of the I-69/TTC project. Issues that are connected with use of the Existing/Planned Transportation Facilities are not yet ready for decision making. Those issues would be the subject of detailed development and evaluation in any Tier Two decision making process. If the EIS for the Tier One decision receives final approval it would show the approved study areas, but it would not authorize construction-related activities. The study areas would then be used in environmental documents in the Tier Two process. The alternatives evaluated in Tier Two (specific proposed alignments for a transportation project) would lie within the boundaries of the approved study areas. (Tier Two studies would also consider the No Action alternative.)

The New Location Corridor Alternative consisted of 75 Reasonable Corridors and seven Reasonable Connector Corridors which were evaluated and compared in the Tier One DEIS. As a result of these evaluations, a Recommended Preferred Alternative (New Location Corridor Alternative) was identified. The Recommended Preferred New Location Corridor provides the best opportunity to meet the purpose and need and avoid or minimize the potential for environmental effects. If approved by the Federal Highway Administration at the conclusion of Tier One studies, the Recommended Preferred New Location Corridor and existing/planned transportation facilities would collectively serve as the study area for developing Tier Two alignment-level alternatives for a future I-69/TTC facility.

The Tier One DEIS is available for public review at TxDOT district and area offices, public libraries in the study area, and online at **www.keeptexasmoving.com**. For a complete listing of locations to view the Tier One DEIS, visit the website or call toll-free at (866) 554-6989. Copies (paper or CD) can be obtained for the actual cost of reproduction and shipping. To order a copy, call toll-free at (866) 554-6989, or send a request via the web on the project comments page at **www.keeptexasmoving.com**.

The TxDOT offices at which you may review the Tier One DEIS include:

Texas Department of Transportation's District Offices

TxDOT District Office	Address	City	Zip	Phone Number
Atlanta District	701 East Main Street	Atlanta	75551	(903) 799-1220
Beaumont District	8350 Eastex Freeway	Beaumont	77708	(409) 892-7311
Bryan District	1300 North Texas Avenue	Bryan	77803	(979) 778-9710
Corpus Christi District	1701 South Padre Island Drive	Corpus Christi	78469	(361) 808-2224
Houston District	7600 Washington Avenue	Houston	77007	(713) 802-5001
Laredo District	1817 Bob Bullock Loop	Laredo	78043	(956) 712-7405
Lufkin District	1805 North Timberland Drive	Lufkin	75901	(936) 634-4433
Pharr District	600 W US Expressway 83	Pharr	78577	(956) 702-6101
Tyler District	2709 West Front Street	Tyler	75702	(903) 510-9220
Yoakum District	403 Huck Street	Yoakum	77995	(361) 293-4332

The department will conduct a series of public hearings between February 4 - March 3, 2008 on the I-69/TTC Tier One DEIS. The purpose of the public hearings is to present the I-69/TTC Tier One DEIS and Recommended Preferred Alternative to the public and to receive public comment.

All interested persons are invited to attend the public hearings to provide comments and learn more about I-69/TTC. Doors will open to the public at 5:00 p.m. An open house will be held between 5:00 p.m. and 6:30 p.m. for viewing maps of the Reasonable Corridors, the Reasonable Connector Corridors, and the Recommended Preferred Alternative. The I-69/TTC Tier One DEIS will also be available for review. The public hearings will begin at 6:30 p.m. with a presentation, followed by public testimony. If requested at least five days in advance, the department will make provisions for persons with special communication or physical needs related to a hearing.

Verbal and written comments from the public regarding the Tier One DEIS are requested. Comments will be accepted at the public hearings or may be submitted in writing before or after the hearings. Written statements may be sent through the project website (**www.keeptexasmoving.com**) or mailed to: Mr. Ed Pensock, Jr., P.E., Texas Department of Transportation, P.O. Box 14428, Austin, Texas 78761. To be included in the official record of the I-69/TTC Tier One EIS, all comments must be submitted or postmarked by Wednesday, March 19, 2008.

Obtener información en Español. Llamada gratis: (866) 554-6989.

In North, Central, and South Texas, 46 public hearings will be held at the following locations:

Texas Department of Transportation's DEIS Public Hearings

Date	City/Town	Meeting Site Location
2/04/2008	**Huntsville**	Walker County Fairgrounds 3925 Highway 30 West Huntsville, TX 77340
2/04/2008	**Center**	Center High School Commons 658 Roughrider Drive Center TX 75935
2/04/2008	**Brownsville**	City of Brownsville Event Center 1 Event Center Blvd/ off Paredes Line Rd Brownsville, TX 78526
2/05/2008	**Cleveland**	Cleveland Civic Center 210 Peach Street Cleveland, TX 77327
2/05/2008	**Carthage**	Carthage High School Auditorium 1 Bulldog Drive Carthage TX 75633
2/5/2008	**Harlingen**	Casa Del Sol 221 East Madison Harlingen, TX 78550
2/06/2008	**Livingston**	Livingston High School 1 Lions Avenue Livingston, TX 77351
2/06/2008	**Longview**	Maud Cobb Activity Center 100 Grand Blvd. Longview TX 75604
2/6/2008	**McAllen**	McAllen Convention Center, Rm 101 700 Convention Center Blvd. McAllen, TX 78501
2/07/2008	**Trinity**	Trinity High School* 500 E. Caroline Trinity, TX 75862
2/07/2008	**Marshall**	Marshall Civic Center 2501 S East End Boulevard Marshall TX 75670
2/7/2008	**Falfurrias**	Sacred Heart Parish Hall 201 W. Blucher St. Falfurrias, TX 78355
2/11/2008	**Wharton**	Wharton High School #1 Tiger Avenue Wharton, TX 77488
2/11/2008	**Diboll**	Lottie & Arthur Temple Civic Center 601 Dennis Street Diboll TX 75941
2/11/2008	**George West**	George West High School Cafeteria 1010 Houston St. George West, TX 78022
2/12/2008	**Houston**	Arabia Shrine Center 2900 North Braeswood Houston, TX 77025
2/12/2008	**Lufkin**	Lufkin Pitser Garrison Civic Center 601 N. 2nd Street Lufkin TX 75901
2/12/2008	**Sinton**	Sinton High School Auditorium 400 N. Pirate Blvd. Sinton, TX 78387
2/13/2008	**Lake Jackson**	Lake Jackson Civic Center 333 Hwy. 332 East Lake Jackson, TX 77566

2/13/2008	**Logansport, LA**	Logansport High School Gymnasium 17228 Hwy 5 Logansport LA 71409
2/13/2008	**Kingsville**	King Ranch Museum 405 N. 6th Street Kingsville, TX 78363
2/14/2008	**Texas City**	Doyle Convention Center 2010 5th Avenue Texas City, TX 77590
2/14/2008	**Nacogdoches**	Fredonia Hotel Convention Center 200 N. Fredonia St Nacogdoches TX 75961
2/14/2008	**Corpus Christi**	Omni Bayfront Hotel Nueces Ballroom 900 N. Shoreline Blvd. Corpus Christi, TX 78401
2/19/2008	**Magnolia**	Magnolia High School 14250 FM 1488 Magnolia, TX 77353
2/19/2008	**Atlanta**	City Auditorium (Police Department) 310 N. Louise Atlanta TX 75551
2/19/2008	**Laredo**	Texas A&M International University Student Center Ballroom, 2nd Floor 5201 University Blvd. Laredo, TX 78041
2/20/2008	**Edna**	Edna High School 1303 West Gayle Edna, TX 77957
2/20/2008	**Texarkana**	Texarkana College Truman Arnold Center 2500 N. Robison Rd. Texarkana TX 75599
2/20/2008	**Freer**	Freer Civic Center 608 Carolyn Street Freer, TX 78357
2/21/2008	**El Campo**	El Campo Civic Center 2350 N Mechanic El Campo, TX 77437
2/21/2008	**Jefferson**	Jefferson High School Commons #1 Bulldog Drive Jefferson TX 75657
2/21/2008	**Alice**	Alice High School Cafeteria #1 Coyote Trail Alice, TX 78332
2/25/2008	**East Bernard**	Riverside Hall 14643 Buls Rd East Bernard, TX 77435
2/25/2008	**Rosenberg**	Rosenberg Civic & Convention Center 3825 Highway 36 South Rosenberg, TX 77471
2/25/2008	**Refugio**	Refugio County Community Center 305 Swift St. Refugio, TX 78377
2/26/2008	**Katy**	Katy High School Performing Arts Center 6331 Highway Blvd Katy, TX 77494
2/26/2008	**Sealy**	Sealy High School 2372 Championship Drive Sealy, TX 77474

2/26/2008	**Beeville**	AC Jones High School Cafeteria 1902 N. Adams St. Beeville, TX 78102
2/27/2008	**Hempstead**	Knights of Columbus 22892 Mack Washington Hempstead, TX 77445
2/27/2008	**Waller**	Waller High School 20950 Fields Store Rd Waller, TX 77484
2/27/2008	**Victoria**	Victoria College Fine Arts Auditorium 2200 E. Red River Victoria, TX 77901
2/28/2008	**Humble**	Humble Civic Center 8233 Will Clayton Parkway Humble, TX 77338
2/28/2008	**Navasota**	Grimes County Expo Center 5220 FM 3455 Navasota, TX 77868
2/28/2008	**Goliad**	Goliad Memorial Auditorium 925 S. US Highway 183 Goliad, TX 77963
3/03/2008	**Bryan**	Bryan Civic Auditorium 800 S. Coulter Drive Bryan, TX 77803

TRD-200706278
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 11, 2007

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Public Notice of FSEIS - Final Supplemental to the Environmental Impact Statement Roadside Pest Management Program

Pursuant to 43 TAC, Part 1, Chapter 2, Subchapter A, §2.18(b), the Texas Department of Transportation (department) is advising the public of the availability of the Final Supplemental to the Environmental Impact Statement (FSEIS) for its Roadside Pest Management Program (PMP). The PMP program is a vital and necessary part of the department's maintenance operations. The PMP program helps to ensure the safety of highway users and department maintenance personnel, prevents erosion through establishment of permanent vegetative cover; promotes and protects the integrity of the State's transportation investments; promotes and preserves native wildlife habitats and native flora in each of the vegetation regions of Texas to the greatest extent practicable, and promotes the coordinated and efficient use of State resources.

The initial Environmental Impact Statement (EIS) was completed in 1996. Since that time, new techniques, chemicals, and procedures have become available. These new additions to the pest management program improve the department's ability to control pests while minimizing adverse impacts to the environment. An update is also necessary in order to fully disclose and update the public on the environmental impacts of the pest management program. The FSEIS will focus on updating the chemicals utilized by department district personnel and the techniques used in their application. In addition, the FSEIS will update other means of pest control such as mechanical, biological, and cultural treatments in combination in five alternative PMP programs. These five alternatives, including no-action, "spot" treatment alternatives, and third-party contracting of the PMP, are evaluated based on the expected effects to the environment of the right-of-way within the typical NEPA categories. The effects were then ranked numerically for each alternative and a preferred alternative of continuing the existing PMP was selected.

To ensure that the full range of issues related to the program is addressed and all significant concerns are identified, comments and suggestions are invited from all interested parties. Comments or questions related to the program and/or the environmental process should be directed to Dennis K. Markwardt, Maintenance Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701. Mr. Markwardt can be reached by telephone at (512) 416-3093 or e-mail at dmarkt@dot.state.tx.us. Any request to purchase paper copies or electronic files of the FSEIS should be made to Mr. Markwardt at the above mentioned address. Public viewing of the FSEIS during the public comment period will be available at each Texas Department of Transportation District Office and at the department's Maintenance Division Office located at 150 East Riverside Drive, Building 150, Fifth Floor of the Maintenance Division, Austin, TX. An electronic version of the FSEIS may be downloaded from the department website at **www.dot.state.tx.us/publications/maintenance.htm**. All comments must be submitted prior to 5:00 p.m. on January 21, 2008.

TRD-200706149
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 6, 2007

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The University of Texas System

Notice of Request for Qualifications

In accordance with the provisions of Texas Government Code, Chapter 2254, The University of Texas System Administration hereby announces a Request for Qualifications (RFQ) for professional or consulting services for the development of conceptual master plans for the redevelopment of the 345-acre Brackenridge Tract in Austin, Texas.

The Board of Regents of The University of Texas System ("Owner") is seeking statements of qualifications ("Qualifications") for selection of a master planner for the creation of a minimum of two conceptual master plans for the development of approximately 346-acres along Lady Bird Lake in Austin, Texas. The Owner hopes to attract consideration of this Request for Qualifications from nationally recognized planners who also possess outstanding communication skills and who are sensitive to and understand the challenges confronting public universities. The Owner's ultimate goal is the development of conceptual master plans for the Brackenridge Tract that present world class planning visions for the tract and that establish The University of Texas at Austin and the City of Austin as leaders in the strategic use of a university asset. The Owner has no pre-identified uses for the Brackenridge Tract.

Chancellor Mark G. Yudof has made a finding that the professional or consulting services are necessary. While The University of Texas System has a substantial need for the services, U. T. System does not currently have sufficient staff with expertise or experience and such Consulting Services cannot be obtained through a contract with another State government entity.

The award for services will be made by U. T. System pursuant to an Request for Qualifications process. This Request for Qualifications ("RFQ") is the first step in a two-step process for selecting a master planner. Interested respondents will prepare and submit Qualifications in accordance with the RFQ requirements for consideration and initial ranking by the Owner. Based on a review and evaluation of all properly submitted responses, the Owner may select up to three of the respondents to attend interviews with the Owner in the second step of the process to confirm the qualifications submittal and answer additional questions. The Owner will then rank the remaining respondents in order to determine a most qualified respondent.

U. T. System's evaluation of the Qualifications shall be based on the requirements described in the RFQ. All properly submitted Qualifications will be reviewed and evaluated by the Owner or its representatives. Qualifications shall not include any information regarding Respondent's fees, pricing, or other compensation. Following step two of the selection process, the Owner will select the most highly qualified consultant based on demonstrated competence, knowledge and qualifications and then attempt to negotiate a contract with that consultant for a fair and reasonable price. If all other considerations are equal, the Owner will give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

To obtain a copy of the Request for Qualifications, please visit the U. T. System Real Estate Office website at http://www.utsystem.edu/reo/, or contact:

Florence P. Mayne, JD Executive Director of Real Estate The University of Texas System 201 West 7th Street, Suite 416 Austin, Texas 78701 Phone: (512) 499-4517 Fax: (512) 499-4388 Email: fmayne@utsystem.edu

Responses to the RFQ are due no later than February 5, 2008, at 5:00 p.m.

TRD-200706302
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: December 11, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).